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ALEXANDER CUNNINGHAM'S PROPOSED EDITION OF THE DIGEST:
AN EPISODE IN THE HISTORY OF THE DUTCH ELEGANT SCHOOL
OF ROMAN LAW
(PART II)

by

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5. – The Netherlands, law students, and scholarly work, 1703–1716

Cunningham cannot always be traced precisely in these years: for example, there is no evidence of where he was in 1704, although he was almost certainly in the Netherlands for most of the year²⁵³. For the first time, however, work on his edition of the *Corpus iuris* seems to have become a priority. In 1704, his former teacher described him as 'throwing himself most energetically into further enhancement of the *jurisprudentia civilis* and into purging of defects the body of the *jus Romanum* more thoroughly than has hitherto been done'²⁵⁴. The greater measure of financial security he had achieved as a result of his annuity from Codrington, such payments as he may have received under the allocation by the act of the Scottish Parliament (renewed for a further five years in 1704), and whatever he had earned as a tutor to noblemen such as Lorne (from whom he may have gained a pension) and Lord George Douglas, allowed him to settle to work, relying on the library he had collected²⁵⁵. Regular book dealing (without having to travel) will also have helped his finances.

The proposed edition continued to arouse great interest. Thus, if Leibniz had earlier been unaware of the extent of Cunningham's full proposals, he certainly became so after Thomas Burnett informed him in a letter of 1700 that his fellow countryman was working on a new edition of the *Corpus iuris civilis*²⁵⁶. By the end of 1703, Leibniz was starting to show definite interest in this, presumably as he himself started to consider the production of a *palingenesis*²⁵⁷. Thus, in March 1703, Cunningham the historian, on Leibniz's behalf, undertook to make some unspecified inquiries of his namesake about his work²⁵⁸. In October,

* Part I has appeared in *Tijdschrift voor Rechtsgeschiedenis*, 69 (2001), p. 81–117.

253. A. Cunningham to G. Cuper, [end November? 1705], KB The Hague, MS 72 H 21, fol. 73–74 describes the critic as having lived in The Hague for the last two years.

254. Voet, *Commentarius ad Pandectas*, XLVIII, xix, 2.

255. APS, Vol. XI, p. 203, c. 9; *A Description of Holland or the Present State of the United Provinces*, London 1743, p. 177–178.

256. T. Burnett to G.W. Leibniz, 18–20 Nov. 1700, NSLB, LBr. 132, fol. 106.

257. See Stolte, *Henrik Brenkman*, p. 14–15; Wallinga, *Gronovius*, p. 477–479.

258. A. Cunningham to G.W. Leibniz, 19 Mar. 1703, NSLB, LBr. 186, fol. 8.

Leibniz, referring to the work of Cunningham (whom he believed to be in England) in restoring the text of the Roman law, raised with Ezechiel Spanheim the query whether there were any whole or partial ‘original’ manuscripts of the Pandects other than the *Florentina*²⁵⁹. By 1705, Leibniz was still expressing strong interest in Cunningham’s textual work based on manuscripts of the Digest²⁶⁰.

The renewal in 1704 for a further five years of Cunningham’s grant from the Scottish Parliament might suggest that he himself still considered that he was some way from completion of his edition²⁶¹. Little weight should be put on this, however, since we do not know the circumstances under which the award was renewed. It is possible that the renewal simply reflected the failure of Cunningham to gain anything from the earlier grant²⁶². In fact, Cunningham seems to have believed he was nearing the end of his work, close to his initial projection of six years.

By early 1705, Cunningham was reported to be negotiating the undertaking of his new edition of the *Corpus iuris* with a publisher in Amsterdam. First to appear would be a new edition of the Digest with critical notes in two octavo volumes. Next, the whole *Corpus* would be published in three or four volumes in folio with all possible types of observations. The Amsterdam publisher, however, wanted the opinion of Noodt, van Bijkershoek, and van Eck on the project²⁶³. This suggests a measure of development in Cunningham’s thinking. His work on the *Digest* had had now led him to conclude that it needed to be published first separately in an edition devoted essentially to establishing the text. Only this would then permit the original plan of 1698 and the fuller proposals in the Saltoun papers to be carried out in the subsequent volumes in folio, where, presumably, the annotations would cover legal and historical material beyond those points necessary merely to provide a critical edition of the text.

Towards the end of 1705, Cunningham was still working energetically on the project: labouring ‘like a Hercules’, as Thomas Burnett put it. Moreover, he was running ‘like Mercury’ from one town to another, to consult books in libraries and the collections of private individuals in connection with his great work, which Burnett reported to be sufficiently advanced that Cunningham hoped to finish it after a few more months of labour. To further the necessary research, he had brought from ‘the library in England’ (presumably that of Sunderland) a large number of rare law books²⁶⁴. Allowing for a scholar’s optimism as to the progress of his work, the negotiation with the publisher and the account of Burnett together suggest that, by the end of 1705, Cunningham had, at the least, made substantial progress on his edition.

259. G.W. Leibniz to E. Spanheim, 26 Oct. 1703, NSLB, LBr. 876, fol. 108 (scroll). He also considered the possibility of a search for ‘originals’ of the Code, given the consideration that some Roman laws survived in Italy and among the Gauls when they were under the authority of the Goths, Burgundians, Franks, or Lombards.

260. G.W. Leibniz to G. Cuper, 31 July 1705, KB The Hague, MS 72 H, fol. 44–45.

261. APS, Vol. XI, p. 203, c. 9.

262. See, e.g., the petition of John Adair seeking renewal of his grant from the Tunnage: NAS, PA 7/19, p. 133–134 (no. 55). Unfortunately there is no similar evidence about the background to Cunningham’s renewal.

263. C. van Bijkershoek to C. van Eck, 10 Jan. 1705, UB Utrecht, MS 1000 7B3.

264. T. Burnett to G.W. Leibniz, 20 Nov. 1705, NSLB, LBr. 132, fol. 149–150.

Yet, the project had problems. In 1700, Cunningham had tried to gain access to Laurens Gronovius's readings from the *Florentina*, before he set off for Italy, where he hoped to have access to the original manuscript. In 1705, he told Burnett that he had heard from Joseph Addison that Leibniz had written to someone about his projected edition, stating that it was to be wished that he had seen the Florentine manuscript of the Pandects in order to undertake such a work. Cunningham viewed this as an attempt to discredit his labours²⁶⁵. Leibniz responded, stating in defence that he could not have written that 'it was to be wished that Mr Cunningham had seen the Florentine Pandects, since I know very well that he has seen them, having known him at Florence'²⁶⁶. This was probably a sensitive point with Cunningham. He had indeed seen the *Florentina* with Lord George Douglas in 1689, as Leibniz knew. In 1697, van Bijkershoek described him to van Eck as an eyewitness of the manuscript and relied on his evidence in a discussion of readings from it²⁶⁷. Yet, it is fairly certain that Cunningham had not been able to make the type of detailed study and collation that Laurens Gronovius had achieved. Thus, when Willem Best, in his book on textual criticism as applied to the Digest, acknowledged Cunningham for one of his assertions about the *Florentina*, he also noted that Cunningham was repeating something he had learned from Jacob Gronovius²⁶⁸. To improve on the edition of the Torelli, a proper examination of the manuscript would have been required. Rumours that he had not seen the *Florentina* and that it was necessary for his work that he should have, would have discouraged any publisher or printer from taking on such a major work.

Cunningham none the less continued to persevere, at least for a while. As Best showed, much could be done without examination of the actual manuscript of the *Florentina*. In 1708, he was described as 'busie about his book which ... he designs for the press very soon'²⁶⁹. A year later, he decided to print a specimen of his work. The impending publication of Henrik Brenkman's *Alfenus Varus* in 1709 was probably what stimulated Cunningham to try to publish an example of his own scholarship in order to stake out his own area of intellectual territory²⁷⁰. Van Bijkershoek mentioned both projects in a letter to van Eck in February 1709²⁷¹. Brenkman's plans were soon common knowledge²⁷². When

265. *Ibid.*

266. G.W. Leibniz to T. Burnett, n.d. [but 1705], in Leibniz, *Opera omnia*, Vol. VI, p. 292–293.

267. C. van Bijkershoek to C. van Eck, 31 July 1697, UB Utrecht, MS 1000 7B3.

268. *Gulielmi Best Jcti, Ratio emendandi leges: sive libellus, in quo, secundum regulas certas, plurimae emendantur leges: nonnullae explicantur: stabilita plerisque in locis pandectarum florentinarum auctoritate. Addita sunt etiam aliorum auctorum loca non pauca, & ex codice Theodosiano quaedam leges, quibus iisdem ex regulis petita adfertur medicina*, Utrecht 1707, p. 17.

269. G. Mackenzie to J. Mackenzie, 4 Mar. 1708, NLS, MS 1118 (Delvine), fol. 65.

270. The very title of Brenkman's study must have seemed threatening to Cunningham: *Pandectae juris civilis auctoribus suis et libris restituti per Henricum Brenkman J.C. representati Pandectarum Florentinorum editione, collatoque ampliss. viri C. van Bynkershoek manuscripto codice et editione Haloandri. Accedunt variae lectiones quas ipse Haloander edidit, nec non Russardi et Charondae, sed et alia quae prolegomenis indicantur. Speciminis loco hic prodit P. Alfenus Varus*, Amsterdam 1709. See Stolte, *Henrik Brenkman*, p. 13–15.

271. C. van Bijkershoek to C. van Eck, 21 Feb. 1709, UB Utrecht MS 1000 7B3.

272. J. Perizonius to C. van Eck, 13 May 1709, UB Utrecht MS 1000 7B5.

Cunningham read the ‘Conspectus Prolegomenon’ of Brenkman’s *Alfenus Varus*, his fears must have been realised²⁷³. Cunningham now tried to obtain a copy of Agustín’s *De nominibus propriis*, a vital book for such a study, and some other works. On 22 February he wrote to his nephew James Logan to request him to obtain two works from Sunderland (which a week earlier he had written to Sunderland to ask to borrow and which Sunderland had acquired from Cunningham) that he needed to complete ‘a Little book’ he intended ‘to publish in a very short time’ and to try to borrow a copy of the Agustín from the Bishop of Ely, who had acquired his copy from Cunningham. Logan was to assure the Bishop that he would get the book back since it was only needed for this short work²⁷⁴. This may have been unsuccessful, as, on 17 March, he tried to obtain a copy of the Agustín from Jacob and Laurens Gronovius in order to prepare his specimen edition²⁷⁵. (Cunningham owned a copy at his death)²⁷⁶. Cunningham may have hoped to use the proposed specimen of his edition to help raise the subscriptions necessary to provide enough finance to put such a complex publication through the press. No more, however, is heard of this proposal. By the summer, Brenkman had decided to study the *Florentina*²⁷⁷.

The failure of Cunningham and Gronovius to publish their researches was a matter of frustration to Leibniz who, by 1709, had developed his own project for a *palingenesis* of the Digest. Through Gisbert Cuper, he made an unsuccessful approach to Laurens Gronovius for access to his collation of the *Florentina*²⁷⁸. Leibniz hoped to approach Cunningham through English friends²⁷⁹. Ultimately Leibniz hoped that the work of Brenkman would stimulate Gronovius into action and felt as frustrated by Cunningham as by Gronovius, contact with the Scot proving impossible²⁸⁰.

Brenkman left for Italy in 1709 and did not return until 1713. He made a new collation of the manuscript, which he also collated with the text of the *Basilica*, while also hunting out mediaeval manuscripts of the Digest²⁸¹. The Gronovii were certainly very upset by this development. Laurens wrote an angry letter to Jacob about it²⁸²; the latter wrote to Magliabechi impugning Brenkman’s competence²⁸³. (Although he soon had to write to defend his brother from the accu-

273. Stolte, *Henrik Brenkman*, p. 99–103.

274. A. Cunningham to J. Logan, 22 Feb. 1709, CUL, MS Dd.3.64, fol. 56.

275. J. Gronovius to L.T. Gronovius, 17 Mar. [n.d. but 1709], UB München, 2° Cod. MS 637, fol. 70.

276. *Bibliotheca Cuningamia*, p. 4 (no. 71) (*Juridici & Politici in Folio*).

277. J. Perizonius to C. van Eck, 18 Aug. 1709, UB Utrecht MS 1000 7B5.

278. G.W. Leibniz to G. Cuper, 27 Feb. 1710, KB The Hague, MS 72 H 17, fol. 179 (scroll NSLB, LBr. 187, fol. 115–116); G. Cuper to G.W. Leibniz, 12 May 1710, NSLB, LBr. 187, fol. 122–127 and 120 (scroll 13 May 1710, KB The Hague, MS 72 H 17, fol. 190–199).

279. G.W. Leibniz to G. Cuper, 27 Feb. 1710, KB The Hague, MS 72 H 17, fol. 179 (scroll NSLB, LBr. 187, fol. 115–116).

280. G.W. Leibniz to G. Cuper, 10 Nov. 1710, KB The Hague, MS 72 H 17, fol. 211–212. Cunningham was not personally known to Cuper; this hindered Leibniz’s acquisition of information about the Scot.

281. Stolte, *Henrik Brenkman*, p. 17–21.

282. L.T. Gronovius to J. Gronovius, 12 Oct. 1709, UB München, 2° Cod. MS 638, fol. 204.

283. J. Gronovius to A. Magliabechi, 24 Jan. 1710, *Clar. Belg.*, Vol. II, p. 231–241 at 232.

sations, spread as gossip by the English ambassador, both that Laurens was making no use of the privilege he had been granted to study the *Florentina* and that he was trying to make a financial profit from the access he had gained – lies worthy of an Englishman)²⁸⁴. Cunningham's attitude to Brenkman's work is unknown; what one can point out is that, after Brenkman returned, the Scotsman assisted him by lending the younger man some of his editions of the Digest²⁸⁵. He does not seem to have shared the Gronovii's irritation and anger, or, at least, if he did, not for long. In fact, Cunningham's intellectual interests and focus had shifted during Brenkman's period in Italy; thus, he may have been resigned to the work of the younger scholar, although he continued to talk of publication of his edition of the Digest²⁸⁶.

What started to occupy Cunningham's attention was an edition of Horace, his work on which provides significant insights into his approach to editing the Digest. In 1711, Richard Bentley, now Master of Trinity College, Cambridge, and undoubtedly the greatest critic of classical literature of the day, published a new edition of Horace. It contained approaching 200 conjectural emendations of the vulgate text of Horace: indeed the *lectio recepta* of Horace was altered in more than 700 passages²⁸⁷. Cunningham started work on a refutation and an alternative edition²⁸⁸. Bentley's biographer has speculated that the impetus for Cunningham to undertake the edition of Horace and write the critique of Bentley's skills as a textual critic may have been anger over Bentley's anonymous attack on his friend Jean Le Clerc, of which Cunningham learned in 1711 from Thomas Johnson, the Scottish bookseller in The Hague²⁸⁹. In 1709, Le

284. J. Gronovius to A. Magliabechi, 28 Mar. 1710, Firenze, BNC, Magl. VIII, S. II, T. II, fol. 13–14 (nr 13). I am grateful to Dr Tammo Wallinga for supplying me with a transcript. See also now, Wallinga, *Gronovius*, p. 479–480.

285. *Henrici Brenkmanni JC. & Academici Florentini historia Pandectarum, seu fatum exemplaris Florentini. Accedit gemina dissertatio de Amalphi*, Utrecht 1722, p. 266 notes 2, 4, and 5.

286. J. Gronovius to L.T. Gronovius, 14 Mar. 1716, UB München, 2^o Cod. MS 637, fol. 42.

287. *Q. Horatius Flaccus, ex recensione et cum notis atque emendationibus Richardi Bentleyi*, Cambridge 1711; Kenney, *The Classical Text*, p. 73; Sandys, *History of Classical Scholarship*, Vol. II, p. 406. On Bentley, see further R. Pfeiffer, *History of Classical Scholarship from 1300 to 1850*, Oxford 1976, p. 143–158; Brink, *English Classical Scholarship*, p. 21–83.

288. *Q. Horatii Flacci Poemata. Ex antiquis codd. & certis observationibus emendavit, variasque scriptorum & impressorum lectiones adjecit Alexander Cuningamius*, The Hague 1721; *Alexandri Cuningamii Animadversiones, in Richardi Bentleyi notas et emendationes ad Q. Horatium Flaccum*, The Hague 1721. Both the *Animadversiones* and the edition of Horace also appeared in 1721 with a London title page. I have not had access to a copy of the Horace with the London title page, but the *Animadversiones* is clearly the Hague edition with the title page cancelled and a new title page affixed, and without the engraving opposite the title page. The Horace is presumably the same.

289. J.H. Monk, *The Life of Richard Bentley, D.D., Master of Trinity College, and Regius Professor of Divinity in the University of Cambridge: With an Account of his Writings, and Anecdotes of Many Distinguished Characters during the Period in which he flourished*, London 1830, p. 214–215, 461–465; and A. Barnes, *Jean Le Clerc (1657–1736) et la république des lettres*, Paris 1938, p. 214–224. Promoting this speculation are two letters published in that source of confusion, Thomson, Introduction, Cunningham, *History of Great Britain*, p. xliii–xliv.

Clerc had published a text of Menander and Philemon²⁹⁰; the next year, the anonymous pamphlet by Bentley, with a preface by Cunningham's friend Pieter Burman, attacked the work with the Cambridge scholar's usual vigour²⁹¹. Cunningham was certainly very interested in this episode and was a close friend of Johnson, who was the source of the rumour of Bentley's authorship; Burman thought that Cunningham had told Le Clerc of Bentley's authorship of the pamphlet²⁹². Whether or not Cunningham was to some extent motivated by a desire to revenge Le Clerc cannot be known²⁹³; it is even possible that politics played a part in Cunningham's decision to challenge Bentley's scholarship, since the latter, deeply involved in disputes in Cambridge and perhaps seeking favour and patronage, departing from his usual allegiance to the Whigs, had dedicated his Horace to Robert Harley, newly created Earl of Oxford, the rival and enemy – in both politics and book collecting – of Cunningham's current patron, Sunderland²⁹⁴. This said, there can be no doubt, however, but that the radical nature of Bentley's approach to textual criticism was what drove Cunningham to many years of sustained work on the text of Horace²⁹⁵.

Until he left for England in 1716, Cunningham's scholarly attentions were nearly exclusively devoted to Horace, although his work on the *Corpus iuris* was not forgotten²⁹⁶. It was well known that Bentley was his target²⁹⁷. As the attempt to provide Sunderland with editions of authors from the *editio princeps* to the most modern editions would suggest, Cunningham approached his work on Horace through a collation of the printed editions and any manuscripts to which he could gain access in order to assess variant readings²⁹⁸. This was in contrast to Bentley's apparent approach to emendations; the Cambridge scholar famously – and to Cunningham no doubt scandalously – remarked in one of his

290. Menander and Philemon, *Reliquiae ... Graece et Latine*, ed. J. Clericus, Amsterdam 1709.

291. *Emendationes in Menandri et Philemonis reliquias, ex nupera editione J. Clerici ... auctore Phileleuthero Lipsiensi*, Utrecht 1710.

292. P. Burman to R. Bentley, 13 Sept. 1710, in *The Correspondence of Richard Bentley, D.D., Master of Trinity College, Cambridge*, 2 vols., London 1842, Vol. I, p. 408–410 at 409.

293. Swift, *Library of Charles Spencer*, Vol. I, p. 255–256 argues that Cunningham could not have been inspired by a desire to revenge Le Clerc, because he could not have been Le Clerc's friend, since he was the friend of Burman, who was the enemy of Le Clerc. She speculates that the friend of Le Clerc was Cunningham the historian, who certainly knew him. Burman's letter to Bentley reveals, however, that Cunningham was on good terms with Le Clerc as well as Burman. It definitely deals with Cunningham the Civilian, since it describes Cunningham as 'having lived in our native land for a long time, in particular at The Hague': P. Burman to R. Bentley, 13 Sept. 1710, in *Correspondence of Richard Bentley*, Vol. I, p. 409. J. Le Clerc to J. Locke, 18 June 1699, *Correspondence of Locke*, Vol. VI, p. 636–638 also shows that Cunningham and Le Clerc were well known to one another.

294. Brink, *English Classical Scholarship*, p. 35; Monk, *Bentley*, p. 241–242.

295. Cunningham, *Animadversiones*, sig. *2.

296. J. Gronovius to L.T. Gronovius, 14 Mar. 1716, UB München, 2° Cod. MS 637, fol. 42; J.G. Reinerding to G.W. Leibniz, 27 Sept. 1715, NSLB, LBr. 765, fol. 8–9.

297. C.M. Pfaff to R. Bentley, 3 July 1714, in *Correspondence of Richard Bentley*, Vol. II, p. 479–480.

298. See J.G. Reinerding to G.W. Leibniz, 29 Oct. and 23 Nov. 1715, NSLB, LBr. 765, fol. 13, 20.

notes to Horace that for him 'both *ratio* and the *res ipsa* were preferable to a hundred manuscripts (*codices*)'. Bentley, of course, was in many ways correct in this; he also recognised the importance of certain manuscripts, however, adding to the quoted remark that it was 'particularly with the support of the old Vatican manuscript'²⁹⁹. In sum, Bentley had an appropriate scepticism towards the vulgate text of Horace and considered more to be necessary in producing a proper recension than simply correcting passages in the *textus receptus* that seemed to be wrong³⁰⁰. Yet, to a scholarly tradition that still favoured an editorial method of tinkering with a *textus receptus* (generally derived from an *editio princeps*), by reference to old *codices*, whether manuscript or printed, Bentley seemed wilful and arbitrary in his dealings with manuscripts and earlier printed texts³⁰¹. Certainly it seemed so to Cunningham. Yet, the need to emend the text was undoubted³⁰². The question was how to provide criteria by which to do so in a way that was not arbitrary, whether it was *emendatio ope ingenii* or *emendatio ope codicis*. In working on Horace, Cunningham tried to formulate an *ars emendandi* with its own *regulae emendandi*³⁰³. To do so was scarcely novel, of course: Le Clerc, for example, had published a standard work on textual criticism in 1697, which 'reveals an acute mind, aware of critical method and able to practise it'³⁰⁴; Best's work on emending the Digest, which may even have been influenced by Cunningham's thinking, gives us an insight into the Scotsman's probable working methods on legal material³⁰⁵. Yet, Cunningham's work on Horace gives us the first clear and practical indication of his approach to criticism and the textual skills that he had applied to the Digest, and his distinct preference for emendation *ope codicis* rather than by simple conjecture. Indeed, in the notes to his text of Horace, Cunningham also identified some of the sources of his emendations, in an attempt to provide some type of control for the assessment of his critical work on the text. The extensive collection of editions of Horace left by Cunningham at his death is testimony to his systematic working methods. Even Bentley's biographer remarked:

299. *Horatius Bentleyi*, note to *Carm.* 3,27,15.

300. Brink, *English Classical Scholarship*, p. 68–69.

301. See Kenney, *The Classical Text*, p. 71–72; Pfeiffer, *History of Classical Scholarship*, p. 153–154.

302. See, e.g., Brink, *English Classical Scholarship*, p. 66–67.

303. *Q. Horatii Flacci Poemata*, sig. *2–*3; Cunningham, *Animadversiones*, p. 1–3.

304. J. Le Clerc, *Ars critica*, Amsterdam 1697. The quotation is from Pfeiffer, *History of Classical Scholarship*, p. 137. See further, Barnes, *Jean Le Clerc*, p. 146–149; Kenney, *The Classical Text*, p. 40–44.

305. J.F. Jugler, *Beyträge zur juristischen Biographie oder genauere litterärische und critische Nachrichten von dem Leben und den Schriften verstorbener Rechtsgelehrten auch Staatsmänner, welche sich in Europa berühmt gemacht haben*, Leipzig 1773–1780, Vol. I, p. 437–441 (not seen, found quoted and reported in R. Feenstra and C.J.D. Waal, *Seventeenth-Century Leyden Law Professors and their Influence on the Development of the Civil Law: A Study of Bronchorst, Vinnius and Voet*, Amsterdam 1975, p. 88 n. 431), claimed that Best had stolen some of Cunningham's ideas on emendation in his book. Van den Bergh, *Gerard Noodt*, p. 312 n. 15 doubts it. There is no way to know. A copy of Best's book with MS notes by Cunningham survives in the Advocates' Library in Edinburgh (Adv. MS 28.7.4). The notes are very scrappy indeed, but one evident feature is that Cunningham has regularly written 'm' in the work, beside expressions of opinion by Best on emendations. Should this be construed as 'mine' or '*mea [opinio]*'?

With respect to the critical rules propounded and followed with so much diligence, it is sufficient to observe, that they will be found useful to the scholar who reads and considers them, even when he does not altogether approve their application. I am of opinion, indeed, that subsequent editors have not sufficiently availed themselves of the labours of Cunningham in establishing the text of Horace³⁰⁶.

By 1716, Cunningham, with his usual optimism, thought his work was near ready for the press³⁰⁷.

As noted, book dealing and book collecting were other important occupations for Cunningham in this period. If Swift's speculations are correct, gathering information for the government and even cryptography will also have taken up some of his time³⁰⁸. In the first half of this first prolonged residence at The Hague, chess playing also provided him with recreation as well as fame. In 1705, when Cunningham's patron and friend Sunderland distinguished himself at chess in Hanover, his people enthusiastically claimed that he was now better than Cunningham, whom he had beaten when last passing through Holland³⁰⁹. As Leibniz began to realise that Cunningham's work on the Digest would not soon to be published, he commented to Burnett in 1707 that, if Cunningham were only to publish his thoughts on playing chess, the public would be in his debt³¹⁰.

Two relationships with young Scottish law students seem to have given Cunningham particular pleasure and allowed him to recreate – in a more limited way – the situation, in which he had found himself with Lord George Douglas, of acting as an intellectual and general mentor to a young man, in return for admiration at his knowledge and understanding. The first of these relationships was with George Mackenzie, son of John Mackenzie of Delvine. Mackenzie studied in Leiden from 1707 to 1710. He was clearly a scapegrace who, for much of the time, was on poor terms with his father. He was admitted an advocate on 7 December 1710³¹¹. He participated in the Jacobite Rebellion in 1715 and was forfeited, but later pardoned³¹².

Mackenzie described Cunningham as one who 'Loves ... to solve any difficulties that may arise to young students'³¹³. Cunningham allowed Mackenzie to come to him for an afternoon twice a week to help solve difficulties he encountered in his reading³¹⁴. If Cunningham's interests were those of a textual critic, he none the less recommended his own teacher Voet to Mackenzie, as the

306. Monk, *Bentley*, p. 464.

307. A. Cunningham to H. Fletcher, 10 Dec. 1716, NLS, Saltoun Papers, MS 16503, fol. 186.

308. Swift, *Library of Charles Spencer*, Vol. I, p. 251–254.

309. G.W. Leibniz to T. Burnett, 14 Dec. 1705, in Leibniz, *Opera omnia*, Vol. VI, p. 270–272 at 271 (scroll dated 10 Dec. 1705, NSLB, LBr. 132, fo. 151).

310. G.W. Leibniz to T. Burnett, 29 Dec. 1707, in Leibniz, *Opera omnia*, Vol. VI, p. 277–279 at 278.

311. *The Faculty of Advocates in Scotland, 1532–1944*, ed. F.J. Grant, Edinburgh 1944, p. 135; *Advocates' Minutes*, Vol. I, p. 289.

312. For some details of the family, see W.C. Dickinson, *Two Students at St. Andrews, 1711–1716. Edited from the Delvine Papers*, Edinburgh 1952, p. xi–xiii.

313. G. Mackenzie to J. Mackenzie, 3 Sept. 1707, NLS, MS 1118 (Delvine), fol. 59.

314. G. Mackenzie to J. Mackenzie, 3 Sept. 1708, NLS, MS 1118 (Delvine), fol. 70.

'Professor being the fittest of all for one that design'd to be an Advocate'³¹⁵. This, of course, reflected the interests of the Scottish students who were concerned to prepare themselves for the examinations in Roman law for admission as an advocate, rather than to train as textual scholars. Thus, a few years earlier one Scottish student had explained Noodt's alleged unpopularity as a teacher as based on his being more of a critic than a lawyer³¹⁶. Cunningham recommended that Mackenzie should prepare before the colleges started by reading the first book of the Institutes; this the young man did, relying only on Vinnius's and Voet's commentaries, perhaps also on Cunningham's guidance³¹⁷. Mackenzie studied the Digest using Voet's *Commentarius ad Pandectas*, along with a work of Wissenbach and Perezius on the Code 'according to Mr Cunninghams advice'³¹⁸. This was not untypical guidance, but Cunningham also obviously advised study of a great many other works, which had to be obtained on loan or by purchase³¹⁹. Mackenzie's father inevitably complained of his son's extravagance in purchasing books³²⁰. One can no doubt see Cunningham's influence in Mackenzie's comment (justifying purchases) that 'the understanding of the Roman writers is so essential to the Law, that without it a man must prove a very pitifull civilian'³²¹. Mackenzie attended Perizonius's public colleges and debated whether to take a college on history with Perizonius or with Gronovius, plumping for the latter 'who [was] far the greater Scholar', while the former showed 'so little respect to our countrymen': again, one suspects, views adopted

315. G. Mackenzie to J. Mackenzie, 3 Sept. 1707, NLS, MS 1118 (Delvine), fol. 59.

316. C. Mackenzie to J. Mackenzie, 15 Oct. 1697, NLS, MS 1333 (Delvine), fol. 114. For a discussion of Scots' studies in the Netherlands, see van Strien and Ahsmann, *Correspondence of John Clerk*, p. 273–302.

317. G. Mackenzie to J. Mackenzie, 3 Sept. 1707, NLS, MS 1118 (Delvine), fol. 59. The first of these is presumably one of the many editions of A. Vinnius, *In quatuor libros Institutionum imperialium commentarius academicus et forensis. Editio novissima et emendatissima, authoris notis antea seorsim impressis aucta et adornata, duobus distincta tomis*, Lyons 1666 (see M. Ahsmann and R. Feenstra, *Bibliografie van Hoogleraren in de Rechten aan de Leidse Universiteit tot 1811*, Amsterdam 1984, p. 283–286 (nos. 844–859)); the second must be a reference to the first or second edition of J. Voet, *Elementa juris secundum ordinem Institutionum Justiniani in usum domesticae exercitationis digesta*, Leiden 1700 (Ahsmann and Feenstra, *Bibliografie*, p. 351 (nos. 1094–1095)).

318. G. Mackenzie to J. Mackenzie, 4 Mar. 1708, NLS, MS 1118 (Delvine), fol. 65. These works were: (presumably) J. Voet, *Commentarius ad pandectas, in quo praeter Romani juris principia ac controversias illustriores jus etiam hodiernum et praecipue fori quaestiones excutiuntur*, Leiden 1698–1704 (rather than the *Compendium juris juxta seriem Pandectarum, adjectis differentiis juris civilis et canonici, ut et definitionibus ac divisionibus praecipuis secundum Institutionum titulos*, Leiden 1682 and many other editions which would have been used as the basis of the class) (see Ahsmann and Feenstra, *Bibliografie*, p. 337–338, 341 (nos. 1042–1047, 1059–1061)). It is not clear from the letter exactly which work of J.J. Wissenbach is recommended, perhaps, given the recommendation of Perezius, it was his *In libros IV priores Codicis ... commentationes cathedrariae*, 2 vols. Franeker 1659–1663; A. Perezius, *Praelectiones in codicem Justinianum*, Amsterdam 1671.

319. G. Mackenzie to J. Mackenzie, 29 Nov. 1707, and n.d., NLS, MS 1118 (Delvine), fol. 63–64.

320. See G. Mackenzie to J. Mackenzie, 4 Mar., 24 May 1708, NLS, MS 1118 (Delvine), fol. 65, 68. Mackenzie and his father, however, were not on good terms, which greatly colours all their correspondence.

321. G. Mackenzie to J. Mackenzie, 4 Mar. 1708, NLS, MS 1118 (Delvine), fol. 65.

from Cunningham³²². Cunningham's opinions no doubt also appear in Mackenzie's explanation to his father that 'the nice understanding of the Law depends on the exact and critical knowledge of the language' and in the statement that he planned 'to take a Colledge of Hebrew from a Jew' in order to 'be able to understand both Greek and Latin the better'³²³. Presumably it was also on Cunningham's advice that Mackenzie read Livy, Dionysius of Halicarnassus, and Aulus Gellius in order to understand Roman antiquities and 'such parts of the Law as depend on them'³²⁴. By 1709, he still evidently followed Cunningham's advice and, for the Digest, referred to Cujas (probably the *Paratitla*), his professor's (Voet's) commentary, Antoine Favre's *Rationalia in Pandectas*, and Ulrich Huber's *Eunomia romana*; for the *Institutes*, he studied the *Commentarius in IV Institutionum libros* of Janus a Costa (whom Cunningham advised in preference to Vinnius), the *Expositiones in IV libros* of Franciscus Broeus, and Theophilus *ad Instituta* (presumably in an edition such as that of Fabrot). He now took a college on Suetonius with Perizonius³²⁵.

John Mackenzie of Delvine was himself an advocate and, though he was clearly grateful for Cunningham's interest in his son, the rather pompous lecturing on legal education he received from George, often to justify expenditure, can often only have served to inflame his evident irritation and dissatisfaction with his eldest son. George comes across in his letters as both young and foolish: it is this that suggests that the opinions on study he voiced were those of Cunningham (if not always explicitly stated to be so). In this respect it is worth noting that Mackenzie also debated whether to take a class on Grotius with Ph.R. Vitriarius or Noodt. He described the former as 'lazy' and the latter as 'malicious' (because he spent his time 'railing at Grotius and these he cites')³²⁶. Are these opinions derived from Cunningham?

Though Mackenzie stayed in Leiden until the Spring of 1710, he last mentions Cunningham in a letter dated 3 September 1708³²⁷. In November 1708, however, Cunningham appeared on behalf of Mackenzie as a witness in litigation about a debt in The Hague³²⁸. The lack of further reference to Cunningham in Mackenzie's correspondence may indicate a cooling of his relationship with the older man; on the other hand, it may simply reflect the fact that in 1709 Cunningham became deeply involved in the project of publishing a specimen of his work on the Digest, while Mackenzie was now established and not in need of so much guidance.

A more satisfactory relationship for Cunningham was that with the young

322. G. Mackenzie to J. Mackenzie, 23 Sept., 29 Nov. 1707, NLS, MS 1118 (Delvine), fol. 61, 63.

323. *Ibid.*

324. G. Mackenzie to J. Mackenzie, 23 Sept., 6 Dec.? 1707, 4 Apr. 1708, NLS, MS 1118 (Delvine), fol. 61, 64, 67.

325. G. Mackenzie to J. Mackenzie, 19 Feb. 1709, NLS, MS 1118 (Delvine), fol. 75. For Cunningham's recommendations, see G. Mackenzie to J. Mackenzie, 29 Nov., 6 Dec.? 1707, NLS, MS 1118 (Delvine), fol. 63, 64.

326. G. Mackenzie to J. Mackenzie, 4 Mar. 1708, NLS, MS 1118 (Delvine), fol. 65.

327. G. Mackenzie to J. Mackenzie, 3 Sept. 1708, NLS, MS 1118 (Delvine), fol. 70.

328. Gemeente Archief, The Hague, Not. Arch. 685, fol. 453 (found cited in Swift, *Library of Charles Spencer*, Vol. I, p. 243, Vol. II, p. 353). Mackenzie's correspondence at this time regularly discusses this litigation.

Andrew Fletcher, who studied law in Leiden from 1714 to 1716. Talented and energetic, Fletcher was to become a judge of the Court of Session as Lord Milton and, as Lord Justice-Clerk, the effective head of the High Court of Justiciary. He was to have a long career as the friend and associate of the Earl of Ilay (later third Duke of Argyll). He was also the nephew of Cunningham's good friend and fellow bibliophile and traveller, Andrew Fletcher of Saltoun³²⁹.

Young Fletcher consulted Cunningham about the classes he should take. Cunningham's own teacher, Voet, having died, he now recommended Anton Schultingh to Fletcher, rather than Vitriarius or Noodt³³⁰. Fletcher also went on to study with Noodt, suggesting that, in principle, Cunningham had no objections to Noodt's classes³³¹. He also took two colleges with Perizonius³³². Because it is mainly the letters of Fletcher's father that survive, rather than those Fletcher himself wrote home, we do not get much detail about or commentary on Fletcher's studies, nor on his relations with Cunningham. Books were sent from Saltoun to young Fletcher for his studies: Favre's *Rationalia* and *Coniecturae*, Cujas's *Opera* and *Epitome*, Brisson's *Lexicon juridicum*, Wesenbachius *ad Pandectas*, Zoesius *ad Pandectas*, Perezius *ad Codicem*, Schotanus *Examen Juridicum*, and the *Selectae quaestiones* of Vinnius³³³. Given the strong correspondence with Cunningham's advice to Mackenzie, this choice was probably guided by him, as well as based on the advice of Fletcher's teachers.

Henry Fletcher was obviously grateful for Cunningham's assistance to his son. In March 1715, he sent to the Netherlands a hamper with fifty-two bottles of ale of two different types from Scotland. Andrew was to make a presentation of them to Cunningham with his father's compliments, and was instructed to find out which of the two types Cunningham preferred, perhaps so that further acceptable gifts could be made and to find out which might be more easily marketed³³⁴.

In spring 1715, Andrew Fletcher of Saltoun, currently in London, decided to travel to the Netherlands to visit his nephew and Cunningham³³⁵. He reached

329. See Shaw, *Management of Scottish Society*, p. 62–63, 86–113; A. Murdoch, *The People Above: Politics and Administration in Mid-Eighteenth-Century Scotland*, Edinburgh 1980, p. 12–14. P.H. Scott, *Andrew Fletcher and the Treaty of Union*, Edinburgh 1992, p. 217 notes Fletcher's friendship with Cunningham, but, on the flimsiest of grounds, concludes it was with the historian.

330. See H. Fletcher to A. Fletcher, 22 Nov. 1714, NLS, Saltoun Papers, MS 16503, fol. 77–78. Andrew Fletcher was evidently going to a newly appointed professor on Cunningham's advice: this was Schultingh, as is confirmed by A. Fletcher to H. Fletcher, 16 July 1715, NLS, Saltoun Papers, MS 16503, fol. 97–98.

331. See A. Fletcher to H. Fletcher, 16 July 1715, NLS, Saltoun Papers, MS 16503, fol. 97–98.

332. H. Fletcher to A. Fletcher, 22 Nov. 1714, NLS, Saltoun Papers, MS 16503, fol. 77–78.

333. H. Fletcher to A. Fletcher, 15 Mar. 1715, NLS, Saltoun Papers, MS 16503, fol. 85–86.

334. H. Fletcher to A. Fletcher, 15 Mar. 1715, NLS, Saltoun Papers, MS 16503, fol. 85–86.

335. H. Fletcher to A. Fletcher, 29 Mar. 1715, NLS, Saltoun Papers, MS 16503, fol. 87.

The Hague on 8 May³³⁶. By July, he had planned to go to Paris in two months, primarily to buy books, while Cunningham, who had business to transact in London, was thinking of going to London in three weeks, returning in three months³³⁷. Cunningham did not make this short visit to London; he may have preferred to stay at The Hague with his friend³³⁸. Fletcher, however, reached Paris towards the end of October, writing to his nephew to tell him to inform Cunningham that 'there are more curious books at Paris than I imagined'³³⁹. In a later letter, he asked young Andrew to let Cunningham know that there were many interesting books in Paris and that he needed the assistance of Cunningham's bibliographic expertise³⁴⁰. Failing this, he sent queries about books by post, although he now was able to console Cunningham that further experience had demonstrated that good books were both 'scarce and dear'³⁴¹. Part of the reason for Cunningham's continuing delay in leaving The Hague was illness³⁴². The state of the scholar's health was still causing anxiety to his friends in April 1716³⁴³. Fletcher was, however, very keen that Cunningham go to London³⁴⁴. He wrote to him specially to persuade him to go in April and asked his nephew to support his arguments³⁴⁵. Young Fletcher was due to join his uncle in Paris in the summer of 1716, after his classes at Leiden ended on 10 or 12 July. He hoped to persuade Cunningham to join him in the journey, a proposal that met with his father's understandable approval³⁴⁶. The elder Andrew Fletcher saw this as a means of getting Cunningham to London with them both in September 1716, if he would not otherwise go³⁴⁷. The only reason Fletcher gave for wanting Cunningham to visit London was the allegation that Cunningham's nephew, obviously James Logan, his associate in book dealing,

336. A. Fletcher to M. Fletcher (scroll), 1715, NLS, Saltoun Papers, MS 16503, fol. 120.

337. A. Fletcher to H. Fletcher, 16 July 1715, NLS, Saltoun Papers, MS 16503, fol. 97–98.

338. A. Fletcher to A. Fletcher, [1715], NLS, Saltoun Papers, MS 16503, fol. 121–122 suggests that Fletcher stayed at The Hague.

339. A. Fletcher to A. Fletcher, 27 Oct. 1715, NLS, Saltoun Papers, MS 16503, fol. 109–110.

340. A. Fletcher to A. Fletcher, Nov. 1715, NLS, Saltoun Papers, MS 16503, fol. 115–116.

341. A. Fletcher to A. Fletcher, 10 Mar. 1716, NLS, Saltoun Papers, MS 16503, fol. 129–130.

342. A. Fletcher to A. Fletcher, Nov. 1715, NLS, Saltoun Papers, MS 16503, fol. 115–116.

343. A. Fletcher to A. Fletcher, 22 Apr. 1716, NLS, Saltoun Papers, MS 16503, fol. 141–142. He was no longer ill, but obviously in a weakened state that made them fear he might fall ill.

344. A. Fletcher to A. Fletcher, 27 Dec. 1715, NLS, Saltoun Papers, MS 16503, fol. 117–118.

345. A. Fletcher to A. Fletcher, 22 Apr. 1716, NLS, Saltoun Papers, MS 16503, fol. 141–142.

346. A. Fletcher to A. Fletcher, 20 Feb., 10 Mar. 1716, NLS, Saltoun Papers, MS 16503, fol. 127, 129–130; H. Fletcher to A. Fletcher, 17 Mar. 1716, NLS, Saltoun Papers, MS 16503, fol. 133.

347. A. Fletcher to A. Fletcher, 22 Apr. 1716, NLS, Saltoun Papers, MS 16503, fol. 141–142.

cheated him³⁴⁸. Even if true, this cannot have been among the reasons urged by Fletcher by letter, since Cunningham continued to employ his nephew as his agent. Fletcher had, of course, at one time hoped that Cunningham would visit London promptly and then come and join him in Paris. Cunningham eventually travelled to London at the end of April, 1716³⁴⁹.

6. – Three years in London, 1716–1719

In December 1716, Cunningham announced the intention of returning to Holland in the middle of February – sooner than he had intended – while hoping to be back in London for the following winter³⁵⁰. Whether or not he made this journey is unrecorded; he was certainly in the English capital in late June 1717. It is unknown if he had visited the Netherlands in the first half of that year³⁵¹. On 12 July 1718, he told Burman that he firmly intended to visit him before the end of August³⁵². Again it is impossible to tell if he made this journey and he was certainly in London in September of that year³⁵³. Whether or not such short visits were made to the Netherlands or elsewhere, Cunningham evidently spent from the beginning of May 1716 until the end of August 1719 mainly in London³⁵⁴.

In a letter written from Paris in March 1716, Andrew Fletcher of Saltoun asked his nephew to give his ‘most harty service’ to Cunningham, whom he hoped to see in London in Lord Sunderland’s library³⁵⁵. While this greeting might simply mark out as a meeting spot a place familiar and congenial to two bibliophiles, Cunningham seems to have spent much of the next three years personally assisting Sunderland in his collecting and perhaps in other matters. Helping his patron in this way may have been a large part of the business to which he had to attend in London. Thus, accounts relating to Sunderland’s book collecting contain receipts dated September 1718, and April and June 1719 in which various booksellers acknowledge payment from Sunderland received through Cunningham³⁵⁶. Cunningham’s confidential involvement in Sunder-

348. A. Fletcher to A. Fletcher, 20 Feb. 1716, NLS, Saltoun Papers, MS 16503, fol. 127.

349. J. G. Reinierding to G.W. Leibniz, 4 May 1716, NSLB, LBr. 765, fol. 33–34; A. Fletcher to A. Fletcher, 26 May? 1716, NLS, Saltoun Papers, MS 16503, fol. 190.

350. A. Cunningham to A. Fletcher, 10 Dec. 1716, NLS, Saltoun Papers, MS 16503, fol. 186.

351. A. Cunningham to P. Burman, 28 June 1717, UB Leiden, MS Burm. Q.23.3. This letter acknowledges receiving correspondence from Burman carried by another, confirming that, when Cunningham talks of having returned to London the next day, this is probably not from the Netherlands.

352. A. Cunningham to P. Burman, 12 July 1718, UB Leiden, MS Burm. Q.23.4.

353. BL, Blenheim Papers, MS Add. 61658, fol. 17.

354. A. Cunningham to unnamed, 3 Aug. 1723, BL, Blenheim Papers, MS Add. 61659, fol. 40; C. Dalrymple to A. Fletcher, 10 Sept. 1719, NLS, Saltoun Papers, MS 16504, fol. 182.

355. A. Fletcher to A. Fletcher, 10 Mar. 1716, NLS, Saltoun Papers, MS 16503, fol. 129–130.

356. BL, Blenheim Papers, MS Add. 61658, fol. 13 (4 July 1718); 14 (12 July 1718); 16 (26 July 1718); 17 (10 Sept. 1718); 28 (1 Apr. 1718); 29 (4 June 1719).

land's affairs went to the extent of offering the substantial inducement of 200 guineas to the bookseller Nathaniel Noel to allow the Earl first choice of his antiquarian books³⁵⁷.

Cunningham had also hoped to find a publisher in London for his edition of Horace; by December 1716, he had concluded that this would not be the case, so that he would need to publish it in the Netherlands³⁵⁸. Cunningham was later reported to have claimed that Bentley did his best to prevent the work's publication³⁵⁹. At the end of June 1717, he wrote to Burman that he had been too tied up with very troublesome business to make much progress with the edition of Horace³⁶⁰. It is fair to assume, however, that, with access to the riches of Sunderland's and other libraries, he did such work as he could. The discussion with Joseph Addison, a noted Latinist, of an issue of criticism recalled in 1721 probably dates from this period, as Addison was first a Secretary to Sunderland as Lord Lieutenant of Ireland before himself becoming Secretary of State for the Southern Department in April 1717³⁶¹. Mention of Addison also reminds us that Cunningham will have resumed participation in the coffee-house society of the wits, no doubt especially going to Slaughter's to play chess³⁶².

Young Andrew Fletcher and his uncle reached London towards the end of August 1716; by this time, the older man was seriously ill and soon to die³⁶³. Cunningham assisted his *protégé* at his old friend's deathbed³⁶⁴. When Sunderland also visited the dying man, Fletcher reputedly enjoined on him the duty of making his nephew a judge when he was ready for it³⁶⁵. Perhaps a more general entrusting of young Andrew to the peer's protection was in fact what transpired; his talented nephew's future was evidently much on Fletcher's mind, as well as the fate of a cousin who had been involved in the recent Rebellion³⁶⁶. When very close to death (which occurred on 15 September), Fletcher dictated to his nephew an informal testament in the form of a letter to his brother in which he bequeathed £200 sterling to relieve 'necessitous poor Scots prisoners or others who are rendered miserable by the late Rebellion' and £100 sterling to Alexander Cunningham 'for the love and favour I bear to [him] to whom I have been much obliged and from whom I have received many kind services these

357. *Diary of Humfrey Wanley*, Vol. I, p. 22; A. Cunningham to P. Burman, 28 June 1717, UB Leiden, MS Burm. Q.23.3 demonstrates Cunningham's strong involvement with Sunderland in this period.

358. A. Cunningham to H. Fletcher, 10 Dec. 1716, NLS, Saltoun Papers, MS 16503, fol. 186.

359. *Description of Holland*, p. 177–178.

360. A. Cunningham to P. Burman, 28 June 1717, UB Leiden, MS Burm. Q.23.3.

361. Cunningham, *Animadversiones*, p. 214.

362. Wodrow, *Analecta*, Vol. II, p. 367; Murray, *History of Chess*, p. 846.

363. A. Fletcher to H. Fletcher, 21 Aug. 1716, NLS, Saltoun Papers, MS 16503, fol. 165.

364. A. Fletcher to H. Fletcher, n.d., NLS, Saltoun Papers, MS 16503, fol. 173–174.

365. Mackenzie, *Fletcher of Saltoun*, p. 304.

366. He also apparently interceded on his deathbed with Sunderland on behalf of a relative who had been involved in the 1715 Rebellion: see H. Fletcher to R. Pringle, 17 Nov. 1716, NAS, State Papers (Scotland) (photocopy), RH 2/4/312, fol. 657–659. Earlier Fletcher had written three times to Sunderland and once to Stanhope about his relative without receiving an answer: A. Fletcher to H. Fletcher, 6 June 1716, NLS, Saltoun Papers, MS 16503, fol. 147.

many years, and to whom your son has been much obliged and may still be more³⁶⁷. These informal dispositions were promptly honoured³⁶⁸.

Young Fletcher's future was also part of the troublesome business that kept Cunningham in London for three years. The aim was that the young man should be admitted as an advocate; his father, however, was anxious that he spend another year outwith Scotland, in France and England. This could be done either before or after he was admitted. Cunningham was to be consulted³⁶⁹. The decision evidently was first for entry to the Faculty of Advocates. Before Fletcher left for Edinburgh, however, on Cunningham's advice, he had twice called to pay his respects to the scholar's old pupil, now second Duke of Argyll, and his brother, the Earl of Ilay; he had not seen them, but Cunningham praised him to them at a later meeting, reporting that he had no doubt but that young Fletcher 'will be honored with their favor and friendship'³⁷⁰. Cunningham may have been naïve in this. He was closely connected with Sunderland; so, to some extent, had been Fletcher's uncle. Given that Sunderland had just engineered the removal of the Campbell brothers from most of their offices under the Crown (Ilay retained the office of Lord Justice General of Scotland), was the son-in-law of the Duke of Marlborough (whom Argyll loathed), and was close to the Squadrone (the Scottish Whigs aligned against Argyll), it seems unlikely that the Campbells were a current source of patronage for Andrew Fletcher³⁷¹.

Fletcher was admitted as an advocate on 26 February 1717³⁷². The need to find sufficient support to gain his appointment to a suitably lucrative post remained. In 1717, Cunningham approached his patron Sunderland about the wishes of Fletcher ('no young man is dearer to me')³⁷³. Nothing was immediately forthcoming. Meanwhile, Fletcher travelled to the Netherlands with his mother, as part of the Saltoun family's business and trading endeavours³⁷⁴. On their return to London, the search for an office (as well as the attempts to sell the Saltoun barley meal) continued. Not all hopes were pinned on Cunningham, however; in 1716, the Duke of Roxburghe had become the Squadrone Secretary of State for Scotland. Henry Fletcher certainly saw him, as well as Sunderland,

367. NLS, Saltoun Papers, MS 16503, fol. 175.

368. See also A. Cunningham to H. Fletcher, 10 Dec. 1716, NLS, Saltoun Papers, MS 16503, fol. 186, and his receipt, dated 5 Jan. 1717, NLS, Saltoun Papers, MS 16809, fol. 12.

369. H. Fletcher to A. Fletcher, 20 Sept. 1716, NLS, Saltoun Papers, MS 16503, fol. 184.

370. A. Cunningham to H. Fletcher, 10 Dec. 1716, NLS, Saltoun Papers, MS 16503, fol. 186.

371. See G.M. Townend, *The Political Career of Charles Spencer, Third Earl of Sunderland 1695–1722*, unpublished Ph.D. thesis, University of Edinburgh 1984, p. 219–221; J.S. Shaw, *The Political History of Eighteenth-Century Scotland*, Basingstoke and London 1999, p. 57–60; Shaw, *Management of Scottish Society*, p. 62–63.

372. *Faculty of Advocates in Scotland*, p. 72; *The Minute Book of the Faculty of Advocates*, Volume 2: 1713–1750, ed. J.M. Pinkerton, Edinburgh 1980 [hereafter *Advocates' Minutes*, Vol. II,] (= Stair Society Vol. 32), p. 14 shows that his public trial (on 23 Feb.) was on *Inst.* 1.3. For Fletcher's anxiety before his trials, see H. Fletcher to A. Fletcher, 29 Jan. 1717, NLS, Saltoun Papers, MS 16503, fol. 194–195.

373. A. Cunningham to P. Burman, 28 June 1717, UB Leiden, MS Burm. Q.23.3.

374. H. Fletcher to A. Fletcher, 20 June and 5 Oct. 1717, NLS, Saltoun Papers, MS 16503, fol. 196, 199–200.

as a possible avenue for his son's advancement³⁷⁵. Roxburghe seems to have encouraged Fletcher's hopes for his son and to have given the impression of willingness to assist, although Cunningham was still expected to provide useful assistance³⁷⁶. By November 1717, assistance from the Squadrone was no longer expected³⁷⁷. Fletcher remained in London, while his father started to doubt the probable success of Cunningham's endeavours on his son's behalf, as those of a man 'litle acquaint with the arts of Court and too believing'³⁷⁸. This plausible assessment of Cunningham's character certainly echoed Thomas Burnett's earlier view that he was 'a man only for study, and never fitted for the way of the world'³⁷⁹. Fletcher meanwhile was to spend time 'to learn the English language, and something of ther Laws, and the State of the nation'; he certainly reported himself as attending the courts, conversing with eminent men, and reading English history, even although 'They have few good Historians ... and no talent that way'³⁸⁰.

By March 1718, Henry Fletcher was losing patience as others seemed to gain offices for which his son might have been suited, commenting that he wished their 'friend Mr C[unningham] were more importunat, and were persuaded that too much modesty is the most ineffective of all V[irtues] at ... C[ourt]'³⁸¹. Sunderland had become Secretary of State for the Northern Department in April 1717; in March 1718, he became First Lord of the Treasury and Lord President of the Council, having cultivated a close relationship with George I and outwitted his political enemies³⁸². A description of informal gatherings at court in 1717 pictured George I 'sometimes playing billiards and other times looking ... on Sunderland at chess with Mr. ----'³⁸³. If Cunningham was the unnamed chess player, then Henry Fletcher's frustration was understandable. In a sense, Cunningham's political access was at a level perhaps too high for a post suitable for Fletcher; yet, Sunderland's appointment as First Lord of the Treasury gave

375. H. Fletcher to A. Fletcher, 12 June 1716, NLS, Saltoun Papers, MS 16503, fol. 150.

376. H. Fletcher to A. Fletcher, 20 June and 5 Oct. 1717, NLS, Saltoun Papers, MS 16503, fol. 196, 199–200.

377. H. Fletcher to A. Fletcher, 21 Nov. 1717, NLS, Saltoun Papers, MS 16503, fol. 203–204.

378. H. Fletcher to A. Fletcher, 28 Nov. and 5 Dec. 1717, NLS, Saltoun Papers, MS 16503, fol. 207–208, 209–210.

379. T. Burnett to G.W. Leibniz, 20 Oct. 1700, NSLB, LBr. 132, fol. 102–103.

380. H. Fletcher to A. Fletcher, 18 Jan. and 22 Feb. 1718, NLS, Saltoun Papers, MS 16504, fol. 7–8, 9–10.

381. H. Fletcher to A. Fletcher, 15 Mar. 1718, NLS, Saltoun Papers, MS 16504, fol. 15–16.

382. Townend, *Political Career of Charles Spencer*, p. 230, 252–253.

383. See *Newsletter*, 14 Nov. 1717, in Historical Manuscripts Commission, *Report of the Manuscripts of his Grace the Duke of Portland, Preserved at Welbeck Abbey*, Vol. V, Norwich 1899, p. 536–538 at 538; also found quoted in Townend, *Political Career of Charles Spencer*, p. 250. For Cunningham's attendance at Court, it is worth noting that, in 1719, shortly before Cunningham left for The Hague with Sunderland, Andrew Fletcher had received a letter from him written from Hampton Court: A. Fletcher to A. Cunningham, (scroll), Aug. 1719, NLS, Saltoun Papers, MS 16746, fol. 126 (the letter is undated, but the other draft letters on the folded sheet relate to the augmentation of Fletcher's salary in 1719; the dating can be put to August, as Fletcher had expected Cunningham already to have left for The Hague).

him influence over many places. Fletcher was now appointed Cashier of the Excise in Scotland at a salary of £300; this might seem very large, but he had to pay clerks out of it³⁸⁴. Indeed, Fletcher (who had temporarily fallen out with his father) was soon seeking an augmentation of the salary, writing Sunderland about the hardships of the office, in a letter ostensibly about sending books to the Earl³⁸⁵. In February 1719, Sunderland became Groom of the Stole, which meant he would now accompany the king on his journeys to Hanover³⁸⁶. Cunningham now played an active role in lobbying the Lords of the Treasury on Fletcher's behalf; by 30 June, an augmentation to £450 had been secured, Cunningham having argued to Sunderland that the matter should be dealt with promptly, so he could have the pleasure of telling Fletcher before he left for The Hague³⁸⁷. In this, Cunningham was 'much [Fletcher's] Servant' and gave directions as to the sending of two books to Sunderland by his *protégé*, presumably in gratitude; no doubt he had advised on their choice³⁸⁸. Fletcher also offered his services to Sunderland in providing information on 'how every thing is managed here from time to time'³⁸⁹. This was the role of Edinburgh agent that he was later to play so successfully for Ilay³⁹⁰.

The grateful Andrew Fletcher wrote to Cunningham on 4 August. He suggested that Cunningham should come home to Scotland and expressed the desire that Cunningham should live in the same house as he where he would support him; given Cunningham's ambitions, he claimed that he could publish in Scotland as cheaply as anywhere else 'and at the same time do honour to your Country'. On 6 January 1719, Fletcher had been chosen one of the Curators of the Advocates' Library. Anxious to help his mentor, he now repeated a request for 'a list of any books of old Edition that [Cunningham] woud part with and the prices'³⁹¹. Despite such offers, Cunningham persisted in his plans to return to The Hague, leaving in September (that is, in late August, old style) 1719³⁹². He travelled with Sunderland, who was on his way to Hanover, reaching The Hague on 24 August³⁹³.

384. NAS, Treasury Entry Books North Britain (photocopy), RH 2/4/426, p. 37.

385. A. Fletcher to Sunderland, 10 Oct. 1718, NLS, Saltoun Papers, MS 16504, fol. 62.

386. Townend, *Political Career of Charles Spencer*, p. 260.

387. C. Dalrymple to A. Fletcher, 23 and 30 June 1719, NLS, Saltoun Papers, MS 16504, fol. 129–130, 131–132; NAS, Treasury Entry Books North Britain (photocopy), RH 2/4/426, p. 103–104.

388. C. Dalrymple to A. Fletcher, 2 July 1719, NLS, Saltoun Papers, MS 16504, fol. 133–134.

389. A. Fletcher to A. Cunningham (scroll), 4 Aug. 1719, NLS, Saltoun Papers, MS 16504, fol. 229–230.

390. See Shaw, *Management of Scottish Society*, p. 147–186.

391. A. Fletcher to A. Cunningham (scroll), 4 Aug. 1719, NLS, Saltoun Papers, MS 16504, fol. 229–230; *Advocates' Minutes*, Vol. II, p. 23.

392. A. Cunningham to unnamed, 3 Aug. 1723, BL, Blenheim Papers, MS Add. 61659, fol. 40.

393. C. Dalrymple to A. Fletcher, 10 Sept. 1719, NLS, Saltoun Papers, MS 16504, fol. 182; Sunderland to Stanhope, 25 Aug. 1719, found quoted in P. H. Stanhope, *History of England from the Peace of Utrecht to the Peace of Versailles, 1713–1783*, 7 vols., 3rd edn., London 1853, Vol. II, appendix, p. lxxxv–lxxxvi. A. Fletcher to A. Cunningham, (scroll), Aug. 1719, NLS, Saltoun Papers, MS 16746, fol. 126, refers to Cunningham's

7. – The final years: the Netherlands, 1719–1730

Cunningham domiciled himself once more at The Hague for his remaining decade. He seems to have visited London in 1726, leaving behind a bundle of papers and books³⁹⁴; he received an invitation to Scotland probably from Andrew Fletcher, now a judge as Lord Milton, which he declined on account of his studies³⁹⁵. The northern Low Countries, where he evidently found the life congenial, were now, however, his home. Like many Scots, he had a profound engagement with Dutch scholarship and intellectual life, while the occupations he wished to pursue were not readily available in Scotland. He also had close friends among the learned in the Netherlands. Thus, in 1724, Pieter Burman could describe ‘the most learned Alexander Cunningham’ as ‘most closely connected to me by a long friendship’³⁹⁶; a few years later he described Cunningham as his ‘old and most trusted friend’³⁹⁷. Cunningham had certainly attempted to help his friend through the minor Scottish dispute in which Burman unsuspectingly found himself involved, when the Dutch scholar provided further notes for the Leiden edition of George Buchanan’s *Opera omnia*, based on that of Thomas Ruddiman³⁹⁸. Cunningham also presented Burman with books on behalf of the Earl of Sunderland³⁹⁹. Cunningham clearly was an intimate member of the circle of friends and pupils of Burman, who was the pupil of Cunningham’s old friend Graevius as well as of Jacob Gronovius⁴⁰⁰.

One of the major attractions of the Netherlands for Cunningham undoubtedly was its brisk antiquarian book trade. Indeed, while the epithets applied to Cunningham have usually been ‘critic’ or ‘civilian’, ‘book dealer’ might perhaps be more accurate in indicating the field of his greatest and most lasting achievements. Until Sunderland’s death, Cunningham continued to acquire

impending departure, but notes receipt of a letter from him dated ‘18th instant’ from Hampton Court, obviously prior to departure.

394. A. Cunningham to J.P. d’Orville, 17 July, 1726, Oxf. Bod., MS D’Orville 485, fol. 175; D. Casley to J.P. d’Orville, 16 Jan. 1726, Oxf. Bod., MS D’Orville 486, fol. 52.

395. A. Cunningham to Lord Milton, 23 July 1726, NLS, Saltoun Papers, MS 16533, fol. 233–234. (This letter is addressed to ‘Lord Minto’. This is surely a mistake, not only because of its preservation in the Saltoun Papers, but also because Cunningham asks his addressee to give his duty to ‘Salton and his Lady’. Henry Fletcher was still alive in 1726. This is a more plausible request for Milton than for Gilbert Elliot of Minto).

396. C. Valerii Flacci setini balbi argonauticon libri octo. ... curante Petro Burmanno, Leiden 1724, p. 153.

397. Publii Ovidii Nasonis opera omnia, IV. voluminibus comprehensa, ed. P. Burman, 4 vols., Amsterdam 1727, Vol. III, p. 767.

398. See J.A. Langerak to C. Mackie, 23 June 1724, EUL, MS La. II.91.B.42. On this episode, see Cairns, *Three Unnoticed Scottish Editions*, p. 24–25. I hope to discuss it further elsewhere. Langerak’s edition appeared as *Georgii Buchanani, ... opera omnia ... curante Thoma Ruddimanno et praefatione Petri Burmanni, in duos tomos distributa*, Leiden 1725.

399. A. Cunningham to Sunderland, 31 May 1720, BL, Blenheim Papers, MS Add. 61658, fol. 51.

400. See, e.g., J.P. d’Orville to F. van Oudendorp, n.d. (but no earlier than 1726), UB Leiden, MS Oud. 4 (opening words ‘saeculum videtur’). On Burman, who awaits a definitive biography, see Sandys, *History of Classical Scholarship*, Vol. II, p. 443–444; G.W. Kernkamp, *Pieter Burman, van 1696 tot 1715 hoogleraar te Utrecht*, Verslag van het Provinciaal Utrechts Genootschap van Kunsten en Wetenschappen (1933), p. 66–136.

books for the peer in the Netherlands; sometimes he purchased on behalf of Sunderland, sometimes Sunderland bought from Cunningham's own collections (or should we say stock?). The Scotsman's particular expertise was revealed in his interest in supplying rare law books, such as those 'printed in Spain Italy Sicily and France' with which he successfully tempted his patron in 1720⁴⁰¹. He examined collections in which there might be books of interest to Sunderland, and on a list of law books with prices sent to Sunderland commented that they were 'both scarce and curious', while negotiating carefully with dealers and sellers on the Earl's behalf⁴⁰². He also promised Sunderland the pick of the law books he intended to buy at a forth-coming auction⁴⁰³. While referring to the rich holdings in law books of the library of the lawyer Samuel van Huls, he added that he was sending his patron 'at least 50 he has not'⁴⁰⁴. He later wrote to Sunderland that he had 'purchased some curious books which Mr Van Huls would be glad to have in his Library'; but, once more stressing his principle of offering the Earl first choice, he added that he would keep them until the latter came to The Hague⁴⁰⁵. He also tried to ensure that Sunderland did not end up with duplicates⁴⁰⁶. Cunningham acted for Sunderland in the purchase of books (particularly incunables) that had been acquired in Italy by the Abbé Greco; he was keen to stress that he bargained on the Earl's behalf and looked after his interests, not paying the excessive prices that Greco sought, while still ensuring that his patron had the pick⁴⁰⁷. He also fixed prices for books bought by Sunderland from Colin Campbell⁴⁰⁸. After Sunderland's sudden death in 1722, Cunningham helped his executors unravel the complex problems arising out of his unpaid debts for books⁴⁰⁹.

401. BL, Blenheim Papers, MS Add. 61657, fol. 168.

402. A. Cunningham to Sunderland, 20 Feb. 1720, BL, Blenheim Papers, MS Add. 61658, fol. 45–46.

403. A. Cunningham to Sunderland, [20 Mar. 1720?], BL, Blenheim Papers, MS Add. 61658, fol. 48.

404. *Ibid.* See *Bibliotheca Hulsiana, sive Catalogus librorum quos ... collegit ... Samuel Hulsius*, 4 vols. in 6, The Hague 1730.

405. A. Cunningham to Sunderland, 26 July 1720, BL, Blenheim Papers, MS Add. 61658, fol. 60.

406. A. Cunningham to Sunderland, 26 Mar. 1720, BL, Blenheim Papers, MS Add. 61658, fol. 49.

407. BL, Blenheim Papers, MS Add. 61657, fol. 168 (probably 1720); Greco to Sunderland, [July 1720?], BL, Blenheim Papers, MS Add. 61658, fol. 58–59; A. Cunningham to Sunderland, 26 July 1720, BL, Blenheim Papers, MS Add. 61658, fol. 60; A. Cunningham to Sunderland, 20 Aug. 1720, BL, Blenheim Papers, MS Add. 61658, fol. 62 (see list at fol. 66–69); A. Cunningham to Sunderland, 24 June 1721, BL, Blenheim Papers, MS Add. 61658, fol. 72; A. Cunningham to unnamed, 23 Aug. 1723, BL, Blenheim Papers, MS Add. 61659, fol. 40.

408. A. Cunningham to unnamed, 23 Aug. 1723, BL, Blenheim Papers, MS Add. 61659, fol. 40; account and receipt of Campbell, BL, Blenheim Papers, MS Add. 61659, fol. 44.

409. A. Cunningham to unnamed, 23 Aug. 1723, BL, Blenheim Papers, MS Add. 61659, fol. 40. The accounts concerning the library also contain an account for £182/1/- for books received from 'Mr Cunningham'. After the listing of the books with their prices is a receipt, dated 24 Jan. 1724, signed by Alexander Cunningham. This does not appear to be an account for books received from the critic and civilian, as the list is written in a hand that strongly appears to be that of his namesake, the Ambassador to Venice, 1716–1720, as

Cunningham's book dealing and agenting continued to his death. When the great library of Cardinal Du Bois was auctioned in Amsterdam in 1725, Cunningham bought books on behalf of Andrew Fletcher, now a Senator of the College of Justice as Lord Milton⁴¹⁰. It is likely that he took other such commissions for this and other sales. In late 1729, the Edinburgh bookseller Gavin Hamilton bought books (mainly on law) from Cunningham for the Advocates' Library⁴¹¹. More evidence may emerge as to his dealing, but Wodrow's claim that he helped (as well as Sunderland) Lord Somers, Lord Cooper, the Earl of Oxford (Harley), and the Earl of Ilay is, at the least, highly plausible⁴¹².

The deep knowledge that Cunningham had accumulated over the years about law books and their editions, perhaps especially in preparation for his proposed edition of the *Corpus iuris civilis*, was also at the disposal of scholars as well as noble collectors. His loan of books to Brenkman has already been noted⁴¹³. Two further episodes are particularly interesting in this respect. The first is Cunningham's contribution to the *Thesaurus iuris romani* of Everardus Otto, the first four volumes of the first edition of which were published in Leiden between 1725 and 1729⁴¹⁴. This important publication made more easily avail-

does the rather shaky and unsteady signature. The list (for books supplied on 8 Mar. 1720) contains several incunables and many items explicitly given an Italian place of printing (BL, Blenheim Papers, MS Add. 61659, fol. 82–83). It is likely these were books supplied by Ambassador Cunningham from Italy and sold to Sunderland. The account was examined by two men and there was an affidavit signed before the English Justice Ellis by Cunningham that the books had not been paid for: T. Goodman and W. Carswell to Godolphin and D. Poulteney, 7/17 Jan. 1723/4, BL, Blenheim Papers, MS Add. 61659, fol. 80. While it is possible that the Critic and Civilian travelled to England and signed such an affidavit, it seems unlikely. He also makes no mention of this debt in his letter of 23 Aug 1723 (from The Hague): BL, Blenheim Papers, MS Add. 61659, fol. 40.

410. A. Cunningham to A. Fletcher, Lord Milton, 23 July 1726, NLS, Saltoun Papers, MS 16533, fol. 233–234 (if this is correctly addressed to Lord Minto rather than Lord Milton, then Cunningham was also acting for another Scottish judge; it is conceivable, even if this was a letter for Milton, there was another for Minto mistakenly addressed to Milton); A. Cunningham to A. Fletcher, Lord Milton, 6 Nov. 1727, NLS, Saltoun Papers, MS 3431, fol. 6–7; A. Cunningham to A. Fletcher, Lord Milton, Nov. 1729, NLS, Saltoun Papers, MS 16540, fol. 134–135; *Bibliotheca Duboisiana*, 4 vols., The Hague 1725.

411. B. Hillyard, *Thomas Ruddiman and the Advocates' Library, 1728–1752*, *Library History* 8 (1990), p. 157–170 at p. 163.

412. Wodrow, *Analecta*, Vol. IV, p. 152–153. There is some evidence of activity for Harley: see note 248 above (in part I). Note also the letters between d'Orville and van Oudendorp in 1724 mentioning a catalogue, presumably for a book sale, involving Cunningham in the discussion: J.P. d'Orville to F. van Oudendorp, 27 Sept., 16 Oct. 1724, UB Leiden, MS Oud. 4.

413. It is fair to speculate that Cunningham would also have been involved in Brenkman's schemes to establish a literary society involving Italian and French scholars, as well as scholars in the Netherlands, one of the aims of which was to publish rare works. It is notable in this respect that Cunningham owned, for example, a number of works in manuscript of Merilius and Janus a Costa, two of the authors whom it had been proposed that this society should publish, as well as having a general, outstanding collection of rare works: see Stolte, *Henrik Brenkman*, p. 34–36; A. Momigliano, *Scipione Maffei e Hendrik Brenkman: Due progetti di collaborazione intellettuale italo-olandese nel Settecento* in A. Momigliano, *Terzo contributo alla storia degli studi classici e del mondo antico*, Rome 1966, p. 179–196; *Bibliotheca Cuningamia*, p. 41 (nos. 521a–e) (*Manuscripta in Quarto*).

414. *Thesaurus iuris romani, continens rariora meliorum interpretum opuscula, in quibus jus Romanum emendatur, explicatur, illustratur, itemque classicis aliisque*

able a number of significant, but obscure and rare, works on Roman law⁴¹⁵. This was a project for which Cunningham's talents, library, and bibliographical knowledge were particularly well suited and Otto, a German who occupied a chair in Roman law in Utrecht, acknowledged his help (and that of Brenkman) in compiling the collection⁴¹⁶. Cunningham's and Brenkman's knowledge of the relevant literature and assistance in choosing the works for the *Thesaurus* also brought them a specific mention in the review in the *Bibliothèque ancienne et moderne*⁴¹⁷. The importance of Cunningham's contribution was generally recognised. Thus, the appearance of the fourth volume of the *Thesaurus* provoked George Turnbull, sometime Regent in Marischal College, Aberdeen, to report, in January 1730, to Mackie, Professor of History in Edinburgh, that 'Otto has been vastly obliged in making that collection' to Cunningham. He added that Cunningham had remarked that 'it has much diminished the value of a Law library he had gathered from all parts of the world with great care'⁴¹⁸. Not only would Cunningham's fame as a scholar and bibliographer have helped validate the scholarship behind the *Thesaurus*, his involvement in book dealing helped promote it; he is found selling copies in Scotland⁴¹⁹.

The second episode demonstrating the benefits others derived from Cunningham's knowledge and bibliographical expertise, especially in editions of the texts and literature of Roman law, was the assistance and advice he gave to J.P. d'Orville when the young man set out on a journey to France and Italy to examine manuscripts and buy books. Cunningham had originally met d'Orville (through Burman) in London in 1718⁴²⁰. He was evidently the type of scholarly young man to whom Cunningham often took a strong liking and for whom he felt an affinity⁴²¹. He had promised d'Orville a 'note of the Italian books' – that

auctoribus haud raro lumen accenditur, cum praefatione Everardi Ottonis, Leiden 1725–1729. On Otto, see R. Welten, *Utrechtse Hoogleraren in de Rechten (1636–1815): Enkele Aspecten van de Geschiedenis van de Rechtenfaculteit te Utrecht*, Tijdschrift voor Rechtsgeschiedenis, 55 (1987), p. 67–101 at p. 77.

415. See M. Ahsmann, *Bibliografie van Hoogleraren in de Rechten aan de Utrechtse Universiteit tot 1811*, Amsterdam 1993, p. 107–108 (no. 243).

416. *Thesaurus iuris romani*, Vol. I, praefatio. Despite Otto's courtesy, Brenkman evidently greatly disliked the Utrecht professor: see Stolte, *Henrik Brenkman*, p. 26.

417. Review of Otto, *Thesaurus iuris civilis*, *Bibliothèque ancienne et moderne*, 23 (1725), p. 327–354 at p. 329.

418. G. Turnbull to C. Mackie, 10 Jan. 1730, EUL, MS La. II.91.B.74. On Turnbull, see M.A. Stewart, *George Turnbull and Educational Reform*, in J.J. Carter and J.H. Pittock (edd.), *Aberdeen and the Enlightenment*, Aberdeen 1987, p. 95–103; P.B. Wood, *The Aberdeen Enlightenment: The Arts Curriculum in the Eighteenth Century*, Aberdeen 1993, p. 40–49. On Mackie see above.

419. A. Cunningham to A. Fletcher, 6 Nov. 1727, NLS, Saltoun Papers, MS 3431, fol. 7. He provided four copies of the third volume at fl 28, 15st each. On the fourth volume see A. Cunningham to A. Fletcher, Nov. 1729, NLS, Saltoun Papers, MS 16540, fol. 134–135.

420. A. Cunningham to P. Burman, 12 July 1718, UB Leiden, MS Burm. Q.23.4.

421. Another example of Cunningham's liking and concern for young men is revealed by his strong upset over an obscure episode in Leiden involving two students, one of whom he clearly regarded as a protégé. A duel also seems to have been involved. Cunningham defended his protégé from the accusation of being one of the parties involved: A. Cunningham to J.P. d'Orville, 25 Apr. 1729, Oxf. Bod., MS D'Orville 485, fol. 179. It is interesting to note that Cunningham's friend Sunderland was accused of homosexual practices: see Wodrow, *Analecta*, Vol. III, p. 443, repeating a story told him. For a discussion

is, those that he should purchase in Italy. Needless to say Cunningham had not managed to deliver the note before d'Orville left⁴²². A month after d'Orville's departure, Cunningham was still promising the 'Catalogue of books proper to be bought in Italy'⁴²³. By the middle of the next month, Cunningham had confessed that he could not 'at present send ... so full a notitia of curious Books best to be had in Italy', because he had left in London, with other papers and books, the catalogue he had made of them. He had none the less provided a list of books to buy with guidance on prices, indicating where d'Orville could exceed the prices marked. These were 'saleable books', so d'Orville was advised to buy more than one example of those of which he wished to keep a copy for himself. Thus, he was advised to buy a copy of the Torelli edition of the *Florentina* if he could buy one for four Roman crowns; on the Haloander Nuremberg edition in three volumes Cunningham commented that it was 'rarer than the pandectae Florent. 1 pistole'. As well as guidance on specific rare books, d'Orville was advised to buy good modern Latin and Italian poets and histories and 'all the Editions of the Classicks if cheap and fair', but especially those of Horace and Virgil and other poets printed by 'old' Aldus, and all editions before 1480 'if cheap'. Cunningham was clearly concerned to stress that fine old editions, such as those by Aldus and Torrentinus were 'much lower' than they were a few years earlier. The advice given to d'Orville about the type of books in general and on specific items to buy rather reflects the guidance given earlier to Lord George Douglas and Sunderland, as well as Cunningham's own library (d'Orville was also to seek some items for his mentor). Cunningham also advised on how to seek out rare books, by finding the booksellers in each town who managed to obtain books from private libraries and monasteries, and on how to ship them home from Italy⁴²⁴.

Part of the reason for the delay in sending the list of books to d'Orville was Cunningham's current scholarly obsessions with Horace and Phaedrus: the letters to d'Orville are full of them. Before dealing with those, it is worth assessing the evidence about his work on the *Corpus iuris civilis* in the last decade of his life. There can be little doubt but that it was not his main concern; the tremendous burst of activity on the project that marked the years from 1703 to 1709 was never repeated. Yet, he obviously returned to it from time to time. In 1723, Abraham Gronovius, son of the now dead Jacob, obtained from his uncle Laurens

of this and other evidence relating to these allegations, see R. Norton, *Mother Clap's Molly House: The Gay Subculture in England 1700–1830*, London 1992, p. 35–43. Whether these allegations (which all came from Sunderland's political enemies) have any significance for our understanding of Cunningham's character is impossible to know. While there may well have been a sexual aspect to Cunningham's attraction to these young men, he was also clearly in general good-natured and friendly; thus, Reinerding described him to Leibniz as 'an extremely friendly man': J.G. Reinerding to G.W. Leibniz, 27 Sept. 1715, NSLB, LBr. 765, fol. 8–9. For another example of Cunningham's helpfulness, see F. van Oudendorp to G. Waddel, 14 Feb. 1725, UB Leiden, MS Oud. 32.

422. A. Cunningham to J.P. d'Orville, 7 June 1726, Oxf. Bod., MS D'Orville 485, fol. 165.

423. A. Cunningham to J.P. d'Orville, 29 June 1726, Oxf. Bod., MS D'Orville 485, fol. 163.

424. A. Cunningham to J.P. d'Orville, 17 July 1726, Oxf. Bod., MS D'Orville 485, fol. 175.

answers to specific queries from Cunningham about readings from the *Florentina*⁴²⁵. Three years later, Cunningham asked d'Orville to check a particular manuscript of the Digest in Milan to establish whether in it D. 37,9, *De ventre in possessionem mittendo et curatore eius*, succeeded or preceded *De coniugendis cum emancipato liberis eius* (D. 37,8)⁴²⁶. One of the books he wanted d'Orville to find for him was one he had cited in his notes on the Digest, but which Sunderland had 'forced' from him⁴²⁷. It is telling, however, that what now interested other scholars was his work on Horace; the learned world had given up on his edition of the Digest.

It was on his edition of Horace and refutation of Bentley that Cunningham focused most of his attention when he finally returned from London to The Hague in the late summer of 1719. His own extensive library of editions of Horace (including five incunables) and commentaries and such collation of manuscripts as he had carried out were the bases of the work. Access to the magnificent library that he had built up for Sunderland was undoubtedly important. Thus, just as he had borrowed books from Sunderland to work on the Digest, now he borrowed works, such as Colonius's commentary on Horace, to prepare his edition⁴²⁸. One can identify a certain personal interest when he marked an edition of Horace in folio, Venice 1509, bought for Sunderland in The Hague, as having 'more Rare reading [sic] than any edit [sic] I have yet seen'⁴²⁹. This, of course, was exactly the kind of expertise for which Sunderland needed Cunningham.

The edition of Horace was eagerly awaited. Within a year of the return to The Hague, individuals were writing to friends in the Netherlands asking for a copy, if it had been published⁴³⁰. Cunningham seems initially, but without success, to have tried to fund the publication by a subscription, a friend having promised to advance the necessary cost of printing⁴³¹. The printing was to be carried out by his friend, the Scottish bookseller in The Hague, Thomas Johnson, who currently had pressing financial problems and on whose behalf Cunningham was also seeking Sunderland's assistance⁴³². By the end of 1721, the edition of Horace and the discussion of Bentley (the *Animadversiones*) were ready. The body of the texts had been printed by 2 December and publication was expected

425. L.T. Gronovius to A. Gronovius, 4 May 1723, UB München, 2^o Cod. MS 638, fol. 284.

426. A. Cunningham to J.P. d'Orville, 17 July 1726, Oxf. Bod., MS D'Orville 485, fol. 175.

427. *Ibid.*

428. A. Cunningham to Sunderland, 24 June 1721, BL, Blenheim Papers, MS Add. 61658, fol. 72. Cunningham in fact had a copy of *Q. Horatii (Flac.) Methodus de arte Poetica per Nic. Colonium exposita*, Bergomi 1587, in his library at his death (*Bibliotheca Cuningamia*, p. 47 (no. 681) (*Poetae in Quarto*)). One trusts it was not that borrowed from Sunderland.

429. BL, Blenheim Papers, MS Add. 61657, fol. 168.

430. J. Mitchell to C. Mackie, 27 Sept. 1720, EUL, MS La. II.90.1.7.

431. A. Cunningham to Sunderland, 20 Aug. 1720, BL, Blenheim Papers, MS Add. 61658, fol. 62.

432. A. Cunningham to Sunderland, 20 Aug. 1720, 24 June 1721, BL, Blenheim Papers, MS Add. 61658, fol. 62, 72; see also T. Johnson to Sunderland, 12 Dec. 1721, BL, Blenheim Papers, MS Add. 61658, fol. 80–81.

before the New Year⁴³³. Cunningham had to provide the introductory matter: the dedication of the *Animadversiones* to Bentley was dated 28 November; the address to the reader of the edition of Horace was dated 13 December⁴³⁴. Johnson was able to report to Sunderland on 12 December that the '[t]itles are actually printing off' and that some would be sent over to London the following week⁴³⁵. A number of copies of the Horace (but not of the *Animadversiones*) were printed on large paper for presentation to important individuals⁴³⁶. Johnson was still sending out presentation copies and copies to booksellers in late January 1722⁴³⁷.

The Horace and the *Animadversiones* were the only fruits of Cunningham's labours to be published in his lifetime. Their commercial success is difficult to judge. Thus, at the end of January, fifty copies of the Horace and thirty of the *Animadversiones* were sent to Edinburgh booksellers at twenty-four stuivers apiece (in the Netherlands they were sold together at three guilders)⁴³⁸. By May 1722, however, one Edinburgh bookseller wanted more copies of both, but could not get so many of the *Animadversiones* as of the Horace, as not so many copies had been printed, and the edition was nearly sold out⁴³⁹. This suggests a reasonable achievement.

This edition of the text of Horace was intended to demonstrate Cunningham's rules in practice⁴⁴⁰. It contained only the slightest critical apparatus, alluding to alternative readings. Cunningham still intended a further edition of Horace to be published with much fuller textual notes, which were referred to in the published edition⁴⁴¹. The lack of an extensive critical apparatus may have reflected Cunningham's failure to raise the subscriptions necessary to fund such an expensive project⁴⁴². Yet, such apparatus as was provided was to some extent intended to demonstrate a system of control over and validation of his critical work. The emphasis was on emendation *ope codicis*, stressed even in the full title of the work – no doubt to draw the appropriate contrast with the work of Bentley. The introduction to the volume set out briefly the manner in which Cunningham believed an edition of an ancient work should be produced⁴⁴³. First, it was necessary to study the oldest manuscript in order to develop rules by which one could distinguish correct readings from corrupt ones in the editions that had followed: in the case of Horace, this MS was the *Codex Antiquissimus*

433. J. Mitchell to C. Mackie, 2 Dec. 1721, EUL, MS La. II.90.1.9.

434. Cunningham, *Animadversiones*, sig. *3v; *Q. Horatii Flacci Poemata*, sig. [*4]v.

435. T. Johnson to Sunderland, 12 Dec. 1721, BL, Blenheim Papers, MS Add. 61658, fol. 80–81.

436. T. Johnson to C. Mackie, May 1722, EUL, MS La. II.91.B.34 (some individuals wondered why they did not get large paper copies of the *Animadversiones*).

437. T. Johnson to C. Mackie, 23 Jan. 1722, EUL, MS La. II.91.B.33. These were presentation copies for Charles Mackie, Duncan Forbes, Fletcher of Saltoun and the Marquess of Tweeddale.

438. T. Johnson to C. Mackie, 23 Jan. 1722, EUL, MS La. II.91.B.33.

439. T. Johnson to C. Mackie, May 1722, EUL, MS La. II.91.B.34.

440. Cunningham, *Animadversiones*, p. 3–4.

441. See, e.g. *Q. Horatii Flacci Poemata*, sig. [*4]v ('as I shall show in the Notes on Horace'). In the apparatus to the text, there are a number of references 'v. *notas*' or 'vid. *notas*'.

442. J. Mitchell to C. Mackie, 28 Apr. 1722, EUL, MS La. II.90.1.10 states that the longer version was to be published by subscription.

443. *Q. Horatii Flacci Poemata*, sig. *2–[*4].

Blandinius; this had been destroyed, but its readings were preserved in the edition of Jacob Cruquius⁴⁴⁴. Secondly, it was necessary to apply these rules of emendation only to corrupt passages, not to correct ones. It was therefore necessary to identify corrupt passages. Thirdly, the critic had to read with care Virgil and other good Latin poets, with notes and variants readings. Cunningham was thus pleased to have read the Italian Renaissance scholar Pierius Valerianus on Virgil, since he there found confirmation of the rules that he had developed from the *Codex Blandinius* because of the variants in the oldest manuscript of Virgil, the *Codex Mediceanus*⁴⁴⁵. A fourth task was to search out for citations and quotations of Horace in the writings of the scholars of the fifteenth and sixteenth centuries, since one could thereby discover readings from manuscripts or early printed editions.

Friends were generous in praise. Herman Boerhaave claimed never to have seen so much hard work, erudition, and common sense brought together in a single volume⁴⁴⁶. Boerhaave knew Cunningham, whose greetings as '*Le Scavant Cunnighame*' he passed on to William Sherard of the Royal Society in London in 1723⁴⁴⁷. The medical professor had embarked by 1718 on an ambitious plan to edit medical authors who had written in Greek (other than Galen and Hippocrates who were already well served by modern editions). In this project he even received assistance from Bentley⁴⁴⁸. Boerhaave was an able judge of classical scholarship and his was therefore a reasonably informed assessment of Cunningham's Horace.

More formal criticisms were mixed. On 1 August 1722, the *Acta Eruditorum* of Leipzig purported to review both volumes⁴⁴⁹. In fact, virtually all the assessment was devoted to the *Animadversiones*, the contents of which, focusing on Cunningham's rules for correcting texts, were set out in some detail. At the end of the main review, the edition of Horace was dismissed as currently adding nothing of note except some readings; but the reviewer did mention the prom-

444. On the *Codex Blandinius*, see, e.g., Sandys, *History of Classical Scholarship*, Vol. I, p. 197, 635–638; Vol. II, p. 217; Pfeiffer, *History of Classical Scholarship*, p. 154. For Cunningham's copy of this edition, see *Bibliotheca Cuningamia*, p. 47 (no. 668) (*Poetae in Quarto*).

445. On the *Codex Mediceanus*, see Sandys, *History of Classical Scholarship*, Vol. I, p. 635, Vol. II, p. 379.

446. Reported in J. Mitchell to C. Mackie, 17 Nov. 1722, EUL, MS La. II.90.1.11: 'je n'ay jamais vû tant de diligence, d'erudition, et de bon sens renfermez ensemble dans un livre'.

447. H. Boerhaave to W. Sherard, 28 Sept. 1723, in *Boerhaave's Correspondence*, Part One, ed. G.A. Lindeboom (= *Analecta Boerhaaviana*, ed. G.A. Lindeboom, Vol. III), Leiden 1962, p. 117–118. In the Index of Persons in *Boerhaave's Correspondence*, Part Two, ed. G.A. Lindeboom (= *Analecta Boerhaaviana*, ed. G.A. Lindeboom, Vol. V), Leiden 1962, p. 395 the only Alexander Cunningham mentioned is he who was the medical student whom we have seen make Cunningham the critic one of the dedicatees of his Leiden thesis in 1725. He seems an unlikely candidate for the description '*savant*' in 1723.

448. G.A. Lindeboom, *Boerhaave and Great Britain, Three Lectures on Boerhaave with Particular Reference to his Relations with Great Britain* (= *Analecta Boerhaaviana*, ed. G.A. Lindeboom, Vol. VII), Leiden 1974, p. 62–65.

449. *Review of Cunningham's Horace and Animadversiones*, *Acta Eruditorum* (1722), p. 377–381.

ised much longer critical edition⁴⁵⁰. The main body of the review was written with an unsympathetic tone; the following *Additamentum* by Gottlieb Kort was, however, a sustained attack, not so much on Cunningham's scholarship, as on the manner in which he had criticised Bentley. The general thrust was that Cunningham was guilty of the vehemence, arrogance, and childish boasting of which he accused Bentley – in fact, in some ways, a not entirely unfair assessment⁴⁵¹. Cunningham's friends characterised this review as 'an ill natured piece'⁴⁵². The review in the *Bibliothèque ancienne et moderne*, the periodical founded by Jean Le Clerc, was more favourable and discussed both volumes published by Cunningham. It sympathetically reported Cunningham's account of how to develop rules to identify true readings and corruptions and how to acquire the knowledge to correct the latter⁴⁵³. None the less, it was pointed out that Cunningham had corrected more than 400 passages – more than Bentley had done. Most of these did not alter the sense, however, but only the expression⁴⁵⁴. The papers of Prosper Marchand in Leiden University Library contain linked assessments of both the *Animadversiones* and the Horace⁴⁵⁵. These were drafts evidently intended for publication⁴⁵⁶. The discussion of the *Animadversiones* is the longer and more complete. It describes the contents in some detail and is written in a tone, highly favourable to Cunningham, but which purports to give a balanced assessment of the work. Again, the review emphasised the discussion of the importance of developing proper rules to emend texts in the *Animadversiones* and the use of the early manuscript of Horace to develop rules.

For the rest of his life, Cunningham prepared his critical edition of Horace. It was never completed. He worked by providing marginal annotations to printed editions and in fact left marginal notes on three copies of his text of Horace and three copies of his *Animadversiones*: six volumes in all⁴⁵⁷. He also annotated other editions of Horace, such as that by Rutgersius of 1699⁴⁵⁸. His notes on this edition passed through the hands of the Earl of Buchan, the Marquess of Lansdowne, and the Scottish historian George Chalmers, before being sold at

450. *Ibid.*, p. 381.

451. *Ibid.*, p. 381–384.

452. J. Mitchell to C. Mackie, 17 Nov. 1722, EUL, MS La. II.90.1.11.

453. *Review of Cunningham's Horace and Animadversiones*, *Bibliothèque ancienne et moderne*, 17 (1722), p. 138–174.

454. *Ibid.*, p. 173.

455. UB Leiden MS March. 58. The review of the *Animadversiones* is at fol. 1–8 and that of the Horace at fol. 9–10.

456. The review of the *Animadversiones* appears to have been prepared for printing and is set out with appropriate conventions of single and double underlining for the typesetter. The handwriting from fol. 1 until slightly over halfway down fol. 6 of UB Leiden MS March. 58 (most of the review of the *Animadversiones*) appears to be that of Thomas Johnson; this may explain the favourable tone of the reviews and suggests they may have been prepared for the *Journal littéraire* published by Johnson at The Hague. Marchand was a close collaborator in this venture: C. Berkvens-Stevelinck, *Prosper Marchand: la vie et l'oeuvre (1678–1756)*, Leiden 1987, p. 110–115. If so, they do not appear to have been published in the *Journal littéraire*.

457. T. Pringle to D. Forbes, 30 Jan. 1731, *Culloden Papers*, p. 120.

458. *Quintus Horatius Flaccus. Accedunt J. Rutgersii Lectiones Venusinae*, Utrecht 1699.

the auction of the last's books in 1841 and thereafter vanishing⁴⁵⁹. The annotations were not just variant readings but contained 'many references to critical authors and passages'⁴⁶⁰. He allegedly 'carried always [this copy] about with him in his pocket'⁴⁶¹. Whether this particular copy or not, this was a plausible practice⁴⁶². Cunningham's surviving annotations on Tacitus give some, if rather limited, indication of how he would have worked, annotating as he read⁴⁶³. It is likely that other editions of Horace owned by him were annotated as part of the great work⁴⁶⁴. Other editions and critical works also served as a source for alternative readings, both conjectural and from inaccessible manuscripts and critical and historical comments; at Cunningham's death, nearly 130 different editions of, or commentaries on, Horace were auctioned from his library.

As ever, Cunningham appears to have been unrealistically optimistic about finishing and publishing. Mitchell reported to Mackie in April 1722 that these notes on Horace were to be published by subscription, but that the 'great work' would 'not be ready yet for a year'⁴⁶⁵. In November 1722, Cunningham claimed that the work was ready for publication and would already have been printed, had there not been a paper shortage caused by the prohibition of trade with France⁴⁶⁶. His correspondence through the 1720s belies this, however; it cer-

459. *Catalogue of the Very Curious and Extensive Library of the Late George Chalmers. Esq. F.R.S., F.A.S. Part the Third*, London 1841, p. 23 no. 319 (second day's sale): *Horatii notis Rutgersii, with numerous Manuscript Notes by A. Cunningham, the Editor of Horace, and an Autograph Letter of Lord Buchan to the First Marquis of Lansdowne, presenting the Volume to him*, 1699.

460. W. Beloe, *Anecdotes of Literature and Scarce Books*, 2 vols., London 1807, Vol. II, p. 402.

461. Thomson, Introduction, Cunningham, *History of Great Britain*, p. xxix, xxxii-xxxiii (note the allegation that comparison by Buchan suggested that the author of these notes on Horace might be the same man as the historian; while this might suggest that the notes were not by the critic, little weight can be given to the claim).

462. *Bibliotheca Cuningamia*, p. 36 (no. 1088) (*Poetae in Octavo & Minori Forma*) is an edition of Horace, Utrecht 1711, 'fide M.S. emendatus', while this could suggest a collation by Cunningham or an assistant of a printed text against an interesting manuscript, it is most likely a mistake for *Q. Horatius Flaccus ad fidem manuscriptorum emendatus ed. P. Burmannus*, Utrecht 1713.

463. See NLS, MS 3400. These are notes on Tacitus, *Dialogus de oratoribus*, from *C. Cornelii Taciti opera latina, cum versione gallica*, Frankfurt 1612. See the discussion by I.C. Cunningham, *Alexander Cunningham on the Text of Tacitus*, *Edinburgh Bibliographical Society Transactions*, 4 (1955-71), p. 149-157. Cunningham later concluded that the texts were not autograph of Alexander Cunningham: I.C. Cunningham, *Alexander Cunningham on the Text of Tacitus*, *Edinburgh Bibliographical Society Transactions*, 4 (1955-71), p. 301-302. I am far from convinced this is correct. It is clear that the heading (as the content would suggest) 'Cum conjecturis MS. D. Al. Cunninghamij, Hagae Comitum conscriptis vel potius collatis cum MS' is not in Cunningham's hand; the actual marginal annotations seem to me to resemble fairly strongly his quite distinctive hand.

464. Swift, *Library of Charles Spencer*, Vol. I, p. 278, Vol. II, p. 363 notes that the Bodleian Library (Bodley 90.c.46) contains a London 1606 edition of Horace, sold from the Sunderland Library in 1881-1883, which contains numerous MS notes (not in the hand of Cunningham), but which once belonged to Cunningham. It may have been a copy acquired by Cunningham for his work because of interest in the notes that ended up in his patron's collection, where, according to Swift, it rather stands out among the fine and interesting editions and incunables.

465. J. Mitchell to C. Mackie, 28 Apr. 1722, EUL, MS La. II.90.1.10.

466. J. Mitchell to C. Mackie, 17 Nov. 1722, EUL, MS La. II.90.1.11.

tainly indicates his familiar inability to decide his work was finished and obsessional concern to check every possibility, no matter how unlikely. Thus, in July 1723, he wrote to d'Orville in Paris, asking him to collate some passages of Horace he had corrected in the *Animadversiones* with the oldest manuscript of the poet in the Bibliothèque du Roi in Paris. Moreover, the young man was asked to buy for him the edition of Horace by Vascosanus (Paris 1553)⁴⁶⁷. Around this time, Cunningham also asked another friend to check his corrections of Horace against a manuscript of the poet in Brussels⁴⁶⁸. D'Orville's collation produced no results for Cunningham, although the Brussels manuscript contained a reading that confirmed one of Cunningham's conjectural emendations⁴⁶⁹. Cunningham's evident hope was to support his conjectural emendations with manuscript readings, but the texts had to be such that it was possible to be confident that they had not been interpolated by grammarians and other interpreters⁴⁷⁰.

Cunningham, however, displayed his usual inability to stay focused on any single project. Charles Mackie's correspondent John Mitchell reported at the end of 1722 that he had 'some suspicion that [Cunningham] is about an Edition of Virgil in the manner of the Horace'. Not only had Johnson the printer given some hint of this, but Cunningham was 'searching after all the Editions of Virgil that he can get'⁴⁷¹. While there is little other direct evidence of his work on Virgil at this period, he certainly was aware of issues arising out of manuscripts of the poet, regretting that there was not a manuscript of Horace as ancient as that of Virgil found in Florence⁴⁷². The work on Virgil grew naturally and directly out of his work on Horace, since, as we have seen, in study of Pierius Valerianus on Virgil, he had found confirmation of the rules on emendation of Horace developed from his study of the *Codex Blandinius*. Indeed, Cunningham claimed that the famous edition of Virgil by Nikolaas Heinsius would have been more correct had the editor, the famed '*sospitator poetarum Latinorum*', thought of these rules. In the introduction to his Horace, Cunningham promised that, in the edition of the poet with critical notes, he would show that Heinsius had not always followed the best readings of the best manuscripts⁴⁷³. Given the detailed work on the text of Virgil this would necessitate, which had perhaps already been carried out, the step to his own edition of the poet was not large, although there is no clear evidence (beyond Mitchell's report) that he ever took it. At his death, his library contained over eighty editions and commentaries (including translations) of the poet, most with critical and textual notes. He proceeded by his normal working method of annotating the margins of printed editions. These

467. A. Cunningham to J.P. d'Orville, 26 July, 1723, Oxf. Bod., MS D'Orville 485, fol. 172. See *Bibliotheca Cuningamia*, p. 47 (no. 663) (*Poetae in Quarto*).

468. A. Cunningham to J.P. d'Orville, 14 Jan. 1724, Oxf. Bod., MS D'Orville 485, fol. 171.

469. *Ibid.*

470. *Ibid.*

471. J. Mitchell to C. Mackie, 17 Nov. 1722, EUL, MS La. II.90.1.11.

472. A. Cunningham to J.P. d'Orville, 14 Jan. 1724, Oxf. Bod., MS D'Orville 485, fol. 171. This is a reference to the *Codex Mediceanus*.

473. *Q. Horatii Flacci Poemata*, sig. *3. On N. Heinsius, see Sandys, *History of Classical Scholarship*, Vol. II, p. 323–326.

were taken back to Scotland on his death⁴⁷⁴. In fact, Cunningham had completed enough of his work on Virgil for his edition to be published in 1743 after his death. Nineteen pages of notes at the end listed his emendations and gave some references to manuscripts and editions used⁴⁷⁵.

Along with the interest in Virgil, Cunningham continued to pursue his work on Horace. D'Orville seems to have sent him two editions of Horace (and one of Longinus) from England in 1725⁴⁷⁶. When d'Orville journeyed to France and Italy in 1726, Cunningham was again anxious to use his assistance for his work on Horace. He was keen that d'Orville, when in France, not only gain the opinion of Jean Bouhier, the jurist and prominent classicist, President of the *Parlement* of Burgundy at Dijon, on Cunningham's *Animadversiones* and work on Horace, but also see if Bouhier would pass on some of his own corrections of Horace's text⁴⁷⁷. In July, Cunningham was still anxious to hear what Bouhier had said about his work on Horace; but, as d'Orville prepared to leave France for Italy, he also asked him to collate some manuscripts of Horace in the Royal Library in Turin – a request later repeated⁴⁷⁸. It seems that Bouhier was not helpful, at least Cunningham thanked d'Orville for doing his 'utmost to procure from the worthy president some of his corrections', which suggests lack of success⁴⁷⁹. Indeed, Bouhier was probably reluctant to give his opinion and unwilling to assist, since he does not seem to have thought highly of Cunningham's work on Horace⁴⁸⁰.

Cunningham's work on Latin authors was, however, now to expand in a different direction. In 1724, Francis Hare published an edition of Terence; in this he had drawn on Bentley's advice as to the best early edition to use – that of Faernus (1565) – and had greatly profited (without giving appropriate and adequate acknowledgement) from Bentley's instruction in early metre⁴⁸¹. This stung Bentley to produce a rival – and superior – edition with his famous account of metre. In this edition, he pointed out the many errors of Hare's text, without once ever naming him. Bentley added to his volume, however, what

474. T. Pringle to D. Forbes, 30 Jan. 1731, *Culloden Papers*, p. 120.

475. P. *Virgilii Maronis Bucolica, Georgica, et Aeneis. Ex recensione Alexandri Cuningamii Scotti, cujus emendationes subjiciuntur*, Edinburgh 1743. See also the address to the reader, p. 5–6 on printed editions and MSS. Added to Cunningham's notes were further references to the *Codex Mediceanus* taken from the printed facsimile of it published in Florence in 1741 (Sandys, *History of Classical Scholarship*, Vol. II, p. 379).

476. A. Cunningham to J.P. d'Orville, 22 Mar. 1725, Oxf. Bod., MS D'Orville 485, fol. 169. One of the editions of Horace was presumably that of William Baxter (London 1725), which contained some critical remarks on Cunningham's edition; the Longinus was presumably the new edition by Z. Pearce (*De sublimitate*, London 1724). See also J. Mitchell to C. Mackie, 6 Feb. 1725, EUL, MS La. II.90.1.16.

477. A. Cunningham to J.P. d'Orville, 29 June 1726, Oxf. Bod., MS D'Orville 485, fol. 163. On Bouhier, see Sandys, *History of Classical Scholarship*, Vol. II, p. 390.

478. A. Cunningham to J.P. d'Orville, 17 July 1726, 15 Sept. 1726, Oxf. Bod., MS D'Orville 485, fol. 175, 173.

479. A. Cunningham to J.P. d'Orville, 15 Sept. 1726, Oxf. Bod., MS D'Orville 485, fol. 173.

480. J. Bouhier to P. Burman, 15 Mar. 1728, UB Leiden, MS Burm. Q.23.

481. P. *Terentii comoediae ad exemplar faernianum a Petro Victorio editum anno M.D.LXV. summa fide recensitae. ... Recensuit, notisque auxit, & dissertationem de metricis comicis adiecit Franciscus Hare*, London 1724. See Monk, *Bentley*, p. 504–513; Brink, *English Classical Scholarship*, p. 73–74.

was evidently a hastily produced edition of Phaedrus and Publilius Syrus⁴⁸². This produced an easy target to attack⁴⁸³. This recension was being sold in London early in January 1726⁴⁸⁴. D'Orville received six examples by the first ship and on 14 January was planning to pass copies to (among others) Burman and perhaps Cunningham (although the latter had himself been in London in January)⁴⁸⁵. By the beginning of March, Arnold Drakenborch was able to report to d'Orville that Cunningham was now contemplating a work on Bentley's Phaedrus⁴⁸⁶. This was soon sufficiently far advanced that Cunningham, after an intensive week of work, was able to travel to Leiden to show his conjectural and other emendations to Abraham Gronovius. The response must have been encouraging, as Cunningham persevered in his resolve to publish his work⁴⁸⁷. By May, however, Francis Hare had published (anonymously) his *Epistola critica* attacking Bentley, in which he also passed some remarks on Cunningham's *Animadversiones*⁴⁸⁸. Cunningham received a copy of this book before he could print his conjectures; he now considered he could not publish them without taking Hare's remarks into account⁴⁸⁹.

Of course, knowing Cunningham's general pattern of work and inability to form a realistic judgement of readiness for publication, it is perfectly possible that his conjectures on Phaedrus were not really adequately prepared in any case. He had also visited his friend Burman, intending to consult him about his conjectures on Phaedrus; but (so he alleged) the attendance of Burman's surgeon to dress the professor's leg had prevented this⁴⁹⁰. Burman, however, was also very upset with Bentley's edition of Phaedrus. He had already published editions of the Latin author and Bentley's publication was to lead to a major breach between the two (very different) scholars⁴⁹¹. Burman now prepared a

482. *Publii Terentii Afri comoediae, Phaedri fabulae Aesopiae, Publii Syri et aliorum veterum sententiae, ex recensione et cum notis Richardi Bentleii*, Cambridge 1726.

483. Monk, *Bentley*, p. 513–518.

484. D. Casley to J.P. d'Orville, 16 Jan. 1726, Oxf. Bod., MS D'Orville 486, fol. 52 (please note that this date is old style, i.e. 5 Jan. n.s.).

485. J.P. d'Orville to F. van Oudendorp, 14 Jan. 1726, UB Leiden, MS Oud. 4. On Cunningham's presence in London at the start of 1726 (already noted), see D. Casley to J.P. d'Orville, 16 Jan. 1726, Oxf. Bod., MS D'Orville 486, fol. 52.

486. A. Drakenborch to J.P. d'Orville, 4 Mar. 1726, Oxf. Bod., MS D'Orville 486, fol. 55–56. Drakenborch also told Mitchell, who reported it to Mackie: J. Mitchell to C. Mackie, 31 May 1726, EUL, MS La. II.90.1.19. Cunningham himself said to d'Orville that he decided to publish his conjectures on Phaedrus, the very day that d'Orville left for Paris: A. Cunningham to J.P. d'Orville, 7 June 1726, Oxf. Bod., MS D'Orville 485, fol. 165. The young man was contemplating his journey to Italy early in April: J.P. d'Orville to R. Bentley, 8 Apr. 1726, in *Correspondence of Richard Bentley*, Vol. II, p. 657–659 at 658.

487. A. Cunningham to J.P. d'Orville, 7 June 1726, Oxf. Bod., MS D'Orville 485, fol. 165.

488. [F. Hare], *Epistola critica ad eruditissimum virum H.B.S.E.I. in qua omnes doctissimi Bentleii in Phaedrum notae atque emendationes expediuntur*, found in *The Works of the Late Right Reverend and Learned Dr. Francis Hare, Lord Bishop of Chichester*, 4 vols., London 1746, Vol. II, p. 285–472. See p. 328 for his mention of Cunningham. See also Monk, *Bentley*, p. 513–518.

489. A. Cunningham to J.P. d'Orville, 7 June 1726, Oxf. Bod., MS D'Orville 485, fol. 165.

490. *Ibid.*

491. See Sandys, *History of Classical Scholarship*, Vol. II, p. 409; Monk, *Bentley*, p. 518–519.

further and typically exhaustive edition of Phaedrus, in which he examined the readings of both Bentley and Hare; Hare's *Epistola critica* was reprinted at the end⁴⁹². Burman's anger and hurt shines through the lengthy preface⁴⁹³. According to Drakenborch, knowledge of Burman's edition caused Cunningham to stop work on his own⁴⁹⁴. This was not quite so. Cunningham, while reporting to d'Orville in Italy that some of Burman's new edition of Phaedrus was already printed and that he would report in two or three weeks what he himself would do, still exhorted the younger man to search for a manuscript of Phaedrus to which it was possible the fifteenth-century Italian scholar Perotti had had access⁴⁹⁵.

In fact, Cunningham continued to work on the text of Phaedrus as well as on that of Horace, right up to his death. In 1727, he promised to send to Lord Milton an account of what he had 'made ready for the press'⁴⁹⁶. The next year, John Mitchell recounted that Cunningham was 'always busy about something'⁴⁹⁷. Finally, George Turnbull wrote from Groningen to Charles Mackie in January 1730 that 'Cunningham has been here severall days; he is a worthy good man but the most entet  about his readings of Horace and Phaedrus'⁴⁹⁸. None the less, it appears that the bulk of the work on Phaedrus was carried out in 1726 in his week-long burst of energy⁴⁹⁹. He followed his general working practice of annotating an existing printed edition and on his death left notes on two editions of Phaedrus, one perhaps being that of Bentley⁵⁰⁰. There are, however, remarkably few editions of Phaedrus in the catalogue of his library. By early 1730, Cunningham must have considered his work on Phaedrus to be nearing completion, as Turnbull reported to Mackie 'that you will soon see another learned work of his in which he is to defend as warmly as ever he attacked a certain Learned Doctor at the expense of a very Reverend prelate'⁵⁰¹. This is evidently a reference to the dispute between Bentley and Hare, now the Bishop of St. Asaph. Should Turnbull have been correct, Cunningham presumably intended to combine his recension of Phaedrus with this defence of Bentley. This project was also left uncompleted at Cunningham's death. His text of Phaedrus was eventually published in Edinburgh in 1757 without any critical notes, although some are preserved in his correspondence with d'Orville⁵⁰².

492. *Phaedri, Augusti Liberti, Fabularum Aesopiarum libri quinque, Cum novo commentario Petri Burmanni*, Leiden 1727.

493. See, e.g., *ibid.*, sig. *2v-4r.

494. A. Drakenborch to M.V. La Croze, 24 Sept. 1726, in *Thesaurus epistolici Lacroziani. Ex bibliotheca Iordaniana edidit Io. Ludovicus Uhlius*, 3 vols., Leipzig 1742–1746, Vol. I, p. 124.

495. A. Cunningham to J.P. d'Orville, 15 Sept. 1726, Oxf. Bod., MS D'Orville 485, fol. 173. On this MS, see also Burman, *Phaedrus*, sig. *****3v-*****2.

496. A. Cunningham to A. Fletcher, 6 Nov. 1727, NLS, Saltoun Papers, MS 3431, fol. 7.

497. J. Mitchell to C. Mackie, 27 July 1728, EUL, MS La. II.90.1.22.

498. G. Turnbull to C. Mackie, 10 Jan. 1730, EUL, MS La. II.91.B.74.

499. *Phaedri Augusti Liberti Fabularum Aesopiarum Libri quinque. Ex recensione Alexandri Cuningamii, Scoti. Accedunt Publii Syri, et aliorum sententiae*, Edinburgh 1757, p. iv states that Cunningham's citations to Burman's *Phaedrus* are to his edition of 1718, not that of 1727, suggesting that the bulk of the work was carried out in 1726.

500. T. Pringle to D. Forbes, 30 Jan. 1731, *Culloden Papers*, p. 120.

501. G. Turnbull to C. Mackie, 10 Jan. 1730, EUL, MS La. II.91.B.74.

502. A. Cunningham to J.P. d'Orville, 29 June 1726, 17 July 1726, Oxf. Bod., MS D'Orville 485, fol. 163v–164v, 175v.

Within a few days of Turnbull's meeting with Cunningham in Groningen, the old man suffered a paralytic stroke at Amsterdam⁵⁰³. In early February, he seemed to be recuperating somewhat⁵⁰⁴. The end, however, was not too far away. The precise date and place of Cunningham's death are both uncertain. His nephew and heir, George Logan, minister of Dunbar, left for the Netherlands in the spring to attend his uncle's deathbed⁵⁰⁵. The records of the Kirk Session of Dunbar show that Logan left in late March and had returned by early October⁵⁰⁶. No records of Cunningham's death and burial in the Netherlands have been discovered⁵⁰⁷. Charles Mackie recorded the death of Alexander Cunningham, 'Literator eximius, at Hague, Decem[be]r 1730'⁵⁰⁸. While the obvious reading is that Cunningham died at The Hague, Mackie could simply intend to indicate that he was the Cunningham who lived there; this would mean that it was possible that Cunningham's death took place in Scotland, especially since it seems unlikely that Logan would have returned to Scotland in October leaving his uncle on his death bed. Supporting this is the observation that, while Dutch friends mention Cunningham's illness in their letters, none mention his death. If this be correct, he had presumably accompanied his nephew home to Scotland to die, as indeed was later reported by a reasonably well informed source⁵⁰⁹. His library would have been left behind to be auctioned in the much livelier book market in the Netherlands. On the other hand, there is no record of Cunningham's death in Scotland, nor of any executry there of his moveable property. Moreover, Mackie normally records a *precise* date of death. Since he knew both Logan and Cunningham, it is surprising that he gave such a vague date of death if Cunningham died so close to Edinburgh as Dunbar. This would suggest death in the Netherlands. More evidence may be found to shed light on this puzzle; but, on balance, it seems unlikely *either* that Logan left his uncle – whose heir he was – to die alone at The Hague, *or* that he subjected an obviously gravely ill old man of around eighty years of age to a journey to Scotland. If this be correct, then Cunningham probably died in the Netherlands no later than the beginning of September 1730, after which Logan returned to Scotland having made arrangements for the sale of his uncle's library and the resolution of his affairs; Mackie was simply mistaken as to the month of Cunningham's death.

503. J.P. d'Orville to F. van Oudendorp, 25 Jan. 1730, UB Leiden, MS Oud. 4; P. Burman to J.P. d'Orville, 1 Feb. 1730, UB Leiden, MS Burm. Q.26, fol. 74v.

504. J.P. d'Orville to F. van Oudendorp, 3 Feb. 1730, UB Leiden, MS Oud. 4.

505. Wodrow, *Analecta*, vol. IV, p. 151. This entry referring to Cunningham's nephew Logan departing for The Hague for his uncle's deathbed must date from March or April 1730. (The editor of the *Analecta* has confused both Alexander Cunninghams: see the editorial notes on *ibid.*, vol. IV, p. 151 and 153). Given that Wodrow always gives Cunningham his territorial designation there is no doubt he is discussing the critic rather than the historian. Wodrow also reports Cunningham as having suffered a stroke: 'a palsy, or some such distemper' (*Analecta*, vol. IV, p. 151).

506. NAS, Register of the Proceedings of the Kirk Session of Dunbar, 1728–1748, CH. 2/647/4, p. 40 (22 Mar. 1730), p. 57 (5 Oct. 1730 (mistakenly entered as 1731)); NAS, Records of the Presbytery of Dunbar, Vol. V: 1720–1734, CH. 2/99/5, p. 321 (4 Mar. 1730), p. 331 (7 Oct. 1730).

507. I am grateful to Dr Kees van Strien for this information.

508. 'Index Funereus', EUL, MS Dc. 1.47, p. 9 (see also EUL, MS La. III.628).

509. *Description of Holland*, p. 178.

Cunningham's most valuable moveable property was undoubtedly his library, which was auctioned in Leiden from 20 to 28 November 1730⁵¹⁰. His literary remains (and perhaps some of his library) were brought back to Scotland⁵¹¹. As well as the notes on Horace, Virgil, and Phaedrus already discussed, Cunningham had made marginal notes on copies of Quintilian, Statius, Cicero, Tacitus, and perhaps other authors⁵¹². It is most unlikely that all of this work was intended for publication. The review of the *Animadversiones* preserved in Prosper Marchand's papers had noted that Cunningham had spent a long time studying Roman authors and their best critics as part of his project of producing a correct and comprehensive edition of the *Corpus iuris civilis*⁵¹³. Many of the annotations surviving on Cunningham's editions of the classics and their modern commentators must have been made as part of his studies for his edition of the Digest rather than for anything else; indeed, it is plausible to assume that his work on Horace, Virgil, and Phaedrus to some extent grew out of studies preparatory to his edition of the *Corpus iuris civilis*. Furthermore, Cunningham evidently made a practice of annotating the margins of his copies of Latin authors as he read them⁵¹⁴.

By January 1731, a debate had started over what to do with Cunningham's literary remains. Apart from the work on the *Corpus iuris civilis* to be discussed below, the most substantial body of work was that on Horace, which, as noted, filled seven – and possibly more – volumes with marginal annotations. Logan reported that Cunningham in fact had 'not left one single scrap of anything ready for the press, or even in any tolerable order'. The notes on Phaedrus were the fullest and most ready for publication⁵¹⁵. The critical notes on Horace were never published. They were probably simply too extensive and too disorganised for anything to be done with them. When Sir Thomas Pringle examined two volumes of the notes on Horace, he commented that 'the hand is so bad, and the lines so closs [*sic*] on one another, that I have difficulty to make sense of them'⁵¹⁶. They are now lost. After so much labour over so many years, all that was ever published were the recensions of Virgil in 1743 and Phaedrus (though without any critical annotations) in 1757.

510. See *Bibliotheca Cuningamia*, sig. *2v. A copy of the catalogue with prices achieved has been preserved and is the object of study by Dr W.A. Kelly, sometime Assistant Keeper of Printed Books at the National Library of Scotland.

511. At the auction of his nephew's library in 1755, it was claimed that it included 'part of the Library of Mr. Cunningham of Bloak Civilian'. While this may well have been the case, it is impossible to identify which items belonged to Cunningham (except in one instance discussed below); moreover, a great deal of books have evidently been added to Logan's collection from other sources to make the auction more substantial: *A Catalogue of Curious and Valuable Books, Chiefly the Library of the late Reverend Mr. George Logan, one of the Ministers of Edinburgh; Among which are Part of the Library of Mr. Cunningham of Bloak Civilian*, Edinburgh 1755.

512. T. Pringle to D. Forbes, 30 Jan. 1731, *Culloden Papers*, p. 120. For the notes on Tacitus, see NLS, MS 3400 discussed (and partially published for the first time) in Cunningham, *Alexander Cunningham on the Text of Tacitus*, p. 149–157.

513. See UB Leiden, MS March. 58, fol. 1.

514. A. Cunningham to J.P. d'Orville, 30 Oct. 1729, Oxf. Bod., MS D'Orville 485, fol. 181.

515. T. Pringle to D. Forbes, 30 Jan. 1731, *Culloden Papers*, p. 120.

516. T. Pringle to D. Forbes, 2 Feb. 1731, *Culloden Papers*, p. 121.

8. – The projected edition of the Digest

Comparison of the proposals in the Fletcher of Saltoun papers with the terms of Cunningham's petition to Parliament in 1698 allows complete confidence that these proposals for publication of a new edition of the *Corpus iuris civilis* are to be attributed to Cunningham, though they are not in his handwriting⁵¹⁷. Exactly why they should be located among various papers on law belonging to Andrew Fletcher, Lord Milton, is unknown; but, as we have seen, Cunningham helped young Fletcher with his studies and in his career and then corresponded with him for the rest of his life. Fletcher must have acquired the proposals from Cunningham, perhaps during the period of his studies in Leiden. The document is now placed in the Saltoun Manuscripts with papers linked with Fletcher's studies of Roman law in the Netherlands and elsewhere; there is no reason to believe that it has always been linked with this material, however, as the organisation of the papers here is not the work of Milton.

The date of the proposals is unknown. They do not appear to be a draft or version of the petition to Parliament, which also seems complete in the form in which it appears in the Parliamentary record. Given the close similarity of the two, however, it is fair to say that the proposals either reflect what already must have been Cunningham's intentions for his edition by 1698, or are a development of them soon after the petition to Parliament. This also fits in with what we know of the development of Cunningham's plans, which may usefully be summed up here. The letter from Moray to van Eck of 1689, if correct in its account of Cunningham's aims at that date, shows that then he merely intended a commentary on the whole of the civil law, and its re-organisation into a more rational order⁵¹⁸. When on his travels around Europe with Lord George Douglas, he may have reached the decision to edit the Digest anew, perhaps inspired by some of his contacts with the leading scholars of the day, as part of a general project of editing the whole *Corpus iuris civilis*; he also planned to expound the Civil Law in a way to make it easier to learn. The proposals must therefore reflect Cunningham's views as developed from the mid-1690s. The task of editing the Digest would have been impossible to carry out in Scotland, which explains his need to gain financial support. By 1697, his plan was 'to set seriously about it' so soon as he was free of his responsibilities towards Lord Lorne⁵¹⁹. By 1703, a reasonably substantial amount of work must have been carried out, although the period from 1703 to 1709 was one of most intense concentration on this project⁵²⁰. By 1705, he obviously believed himself well enough advanced to consider negotiating with members of the Amsterdam book trade about publication of his edition⁵²¹. Moreover, by now, his focus on editing the Digest had

517. Aspects of the handwriting in which the proposals are written bear a resemblance to some of the characteristics of the hand of James Logan, Cunningham's nephew. The hand in which the proposals are written has, however, some old-fashioned characteristics, deriving from Scottish secretary hand, which are not present in Logan's hand, which is purely italic. The handwriting is most probably not that of Logan.

518. R. Moray to C. van Eck, 23 Aug. 1689, UB Utrecht, MS 1000 7B4.

519. A. Cunningham to W. Carstares, 20 Oct. 1697, *Carstares' State Papers*, p. 360–361.

520. C. van Bijkershoek to C. van Eck, 6 Sept. 1703, UB Utrecht, MS 1000 7B3.

521. C. van Bijkershoek to C. van Eck, 10 Jan. 1705, UB Utrecht, MS 1000 7B3; T. Burnett to G.W. Leibniz, 20 Nov. 1705, NSLB, LBr. 132, fol. 149–150.

developed sufficiently that a critical edition of it was to be published first, followed by three or four volumes that would encompass the project as already intended⁵²². (This confirms that the proposals printed here date from a while before 1705). In 1708, Cunningham still hoped to have his edition printed shortly⁵²³. In 1709, realising that he was not going to be able to print the whole work soon, he considered publishing a specimen; this project did not come to fruition⁵²⁴. This last year is, of course, the year that Brenkman set out on his Italian journey. Like Cunningham, Brenkman had been living at The Hague for a few years, and the two must have known one another. According to Stolte, Brenkman set out on this journey with the aim of producing a *palingenesis*, but at some stage decided to produce a new edition of the Digest⁵²⁵.

Brenkman returned from Italy in 1713, and devoted the rest of his life to producing an edition of the Digest. Cunningham seems none the less to have continued to work to some extent on his edition. We have already noted his gaining readings from Laurens Gronovius's collation of the *Florentina* in 1723 and request to d'Orville to check a manuscript of the Digest in Milan in 1726⁵²⁶. From 1711 onwards, however, we know that Cunningham devoted most of his attention to editions of a number of classical authors. It seems likely that he pursued work on his own edition of the *Corpus iuris* much less energetically because of the work of Brenkman, whom he assisted through the loan of some of his editions of the Digest. There is no reason to believe that Cunningham ever lost interest in the task; what we have seen of his work patterns suggests that he will have continued to work on the text, if only in desultory fashion.

We know that Cunningham worked on his edition of the *Corpus iuris civilis* by having the volumes of a copy interleaved with blank sheets on which he wrote his annotations⁵²⁷. This indicates that his intention was to use an existing printed text as the foundation on which to build his own edition. The proposals in the Fletcher of Saltoun papers show that Cunningham accepted the view that the *Florentina* should be the basis of the text of the Digest. He also claimed to be producing a more accurate edition of the *Florentina* than that published by the Torelli in 1553. This might suggest that he probably would have had an interleaved copy of the Torelli edition for that part of the *Corpus iuris civilis*. On the other hand, van Leeuwen's two-volume edition is very much Cunningham's target, and he may have based his edition around that.

Some equivocal evidence on this issue is found in the sale catalogue of the library of Cunningham's nephew, which, in a section of books in folio, lists the following manuscript item: 'Prelections on the Civil Law in Latin. 2 vols. by Mr. Cunningham'⁵²⁸. Given that it was not unusual for teachers to make notes for their classes on an interleaved copy of their chosen textbook, this entry

522. C. van Bijndershoek to C. van Eck, 10 Jan. 1705, UB Utrecht, MS 1000 7B3.

523. G. Mackenzie to J. Mackenzie, 4 Mar. 1708, NLS, MS 1118 (Delvine), fol. 65.

524. C. van Bijndershoek to C. van Eck, 21 Feb. 1709, UB Utrecht, MS 1000 7B3.

525. Stolte, *Henrik Brenkman*, p. 10–21.

526. L.T. Gronovius to A. Gronovius, 4 May 1723, UB München 2° Cod. MS 638, fol. 284; A. Cunningham to J.P. d'Orville, 17 July 1726, Oxf. Bod., MS D'Orville 485, fol. 175.

527. T. Pringle to D. Forbes, 30 Jan. 1731, *Culloden Papers*, p. 120–121.

528. *Catalogue of the Library of Mr. George Logan*, p. 34 (no. 1072).

prompts the speculation that these two volumes are from the interleaved volumes of the *Corpus iuris civilis* in which Cunningham had worked on his edition, misinterpreted by the auctioneers as teaching notes. The two-volume format could suggest he was using van Leeuwen's two-volume edition as his base text, in which case these volumes would constitute his entire draft edition. On the other hand, the sheer size of the resulting volumes strongly suggests that these two interleaved volumes cannot be the entire working draft of Cunningham's proposed edition: for example, Brenkman's interleaved copy of the (three-volume) Torelli edition of the Digest ended up as five volumes⁵²⁹. Moreover, it seems unlikely that two interleaved volumes would succeed in containing all the annotations Cunningham wished to make, although they could perhaps reflect work on the special two-volume edition of the Digest, designed solely to establish the text, that was proposed by 1705. It is always possible that the volumes are something quite different; at most, it seems possible that these may be part of his edition⁵³⁰. Furthermore, the volumes are catalogued simply as a manuscript; there is no indication that these were printed volumes interleaved with manuscript notes. Rather than the edition of the text, they could derive from the other parts of his proposals.

While Cunningham's proposals were to edit the whole *Corpus iuris civilis*, it is obvious that his primary concern was the Digest, which had eventually led him in 1705 to propose the separate publication of an edition devoted to the intricate problems of establishing its text⁵³¹. There are two aspects to his ambition to produce a text of the *Florentina* more accurate than that of the Torelli. He would have hoped, first, to print a version that better reproduced the text of the manuscript, and, secondly, to emend that text to produce a text of the Digest as correct as possible.

The first of these aims would have required a fresh collation – or the use of a fresh collation – of the manuscript. There is no record of Cunningham having made one, which, given the difficulty of access to the *Florentina*, suggests that he never did, although he had certainly seen it and had made some kind of limited examination of it⁵³². Cunningham made several trips to Italy, however, which in theory would have given him the opportunity to make a collation of some type. The evidence can be summed up. He obviously had not collated the manuscript before 1700, when Graevius wrote to both of the Gronovii reporting that Cunningham planned to do so on his forthcoming Italian journey, while offering 100 guilders for access to the readings in Laurens Gronovius's collation.⁵³³ Best reported in 1707 that Cunningham had confirmed that geminations

529. See Stolte, *Henrik Brenkman*, p. 116.

530. These volumes cannot be the book annotated by him and Lord George Douglas that became NLS, Adv. MS 28.7.3 (which is in two volumes) as it is not in folio. According to notes on the flyleaves this work and NLS, Adv. MS 28.7.4 were presented to the Advocates' Library on 20 Jun. 1763 by David Clerk M.D. He was the son of John Clerk who published the posthumous editions of Cunningham's Virgil and Phaedrus: Irving, *Memoirs of Buchanan*, p. 414–415.

531. C. van Bijkershoek to C. van Eck, 10 Jan. 1705, UB Utrecht, MS 1000 7B3.

532. C. van Bijkershoek to C. van Eck, 31 July 1697, UB Utrecht, MS 1000 7B3; G.W. Leibniz to T. Burnett, n.d. [but 1705], in Leibniz, *Opera omnia*, Vol. VI, p. 292–293.

533. J.G. Graevius to L.T. Gronovius, 9 Aug. 1700, UB München, 2^o Cod. MS 649, fol. 65; J.G. Graevius to J. Gronovius, 9 Aug. 1700, UB München, 2^o Cod. MS 648.

were not indicated in the *Florentina* by capitals, and that Cunningham had acquired this information from Jacob Gronovius⁵³⁴. This strongly suggests that Cunningham had not studied the *Florentina* between 1700 and 1707; there is no evidence of him visiting Italy after this date. Given that Brenkman knew Cunningham, one might have expected him to mention Cunningham's collation of the manuscript, when he discussed in 1722 those who had examined the *Florentina*, had Cunningham in fact carried out this work⁵³⁵. Cunningham's obtaining of readings from Laurens Gronovius in 1723 tends to confirm that he never succeeded in making his own collation of the manuscript⁵³⁶. Brenkman's success in making a fresh collation of the *Florentina* suggests that Cunningham's failure to have done so may have been one of the factors that led him to abandon systematic and sustained work on his own edition.

Cunningham's second aim of correction of the text of the *Florentina* to produce a more accurate version raises a number of interesting and difficult issues. His intention to use the *Florentina* as the foundation of his text of the Digest might suggest that he viewed all subsequent manuscripts as derivative of it. If so, his proposal to give more variant readings than found in van Leeuwen's edition (supposing this refers especially to the text of the Digest, as I think it must) and to establish which were the 'best' readings, therefore raises a difficulty⁵³⁷. What value did he give to the vulgate tradition? There is no way of knowing. Brenkman faced the same problem⁵³⁸. Whether Cunningham thought that the vulgate was a good source of conjectural corrections, or had an independent value, as, according to Stolte, Brenkman ultimately came to believe, is unknown; contemporary opinions were mixed⁵³⁹. Cunningham had always been interested in the variant readings in the vulgate tradition and elsewhere; indeed, in 1697, he had told van Bijnkershoek his plan was to publish the *Corpus iuris* with the variant readings from all the editions issued after the Florentine Pandects⁵⁴⁰. It may simply be, however, (as his attack on Bentley suggests) that *emendatio ope codicum* ranked higher as a mode of procedure than that *ope ingenii*; he was certainly keen to have his conjectures on Horace confirmed by manuscripts.

The sources for readings variant from those of the *Florentina* were either manuscripts or printed editions. The first problem is to know which manuscripts Cunningham had studied. At the time of his death, he owned a manuscript, described as of the whole *Corpus iuris civilis* (including the Digest, Code, and Institutes), which he perhaps purchased after 1722, since Brenkman does not list it as among the manuscripts '*in Belgio nostro*'⁵⁴¹. About this manuscript

534. Best, *Ratio emendandi leges*, p. 17.

535. Brenkman, *Historia Pandectarum*, p. 71–92.

536. L.T. Gronovius to A. Gronovius, 4 May 1723, UB München 2° Cod. MS 638, fol. 284.

537. See appendix; cf. *APS*, Vol. X, p. 145, appendix, p. 27.

538. Brenkman, *Historia Pandectarum*, p. 244–245. This is discussed in Osler, *Vestigia doctorum virorum*, p. 79–80.

539. Stolte, *Henrik Brenkman*, p. 69–70. See *ibid.*, p. 73–77 on Brenkman's somewhat complex notion of the Vulgate. For the contemporary scholarship on this point, see Brenkman, *Historia Pandectarum*, p. 238–245.

540. C. van Bijnkershoek to C. van Eck, 31 July 1697, UB Utrecht, MS 1000 7B3.

541. *Bibliotheca Cuningamia*, p. 3 (no. 68) (*Juridici & Politici in Folio*); Brenkman, *Historia Pandectarum*, p. 259.

nothing can be said. Cunningham had sought access to van Bijkershoek's manuscript, and had presumably been granted it⁵⁴². His travels in Italy and France had certainly given him the opportunity to study other manuscripts, but we have no evidence of which. The manuscripts listed by Brenkman in his *Historia Pandectarum* as those which he used probably give us an indication of those which Cunningham may have studied or (more likely) have hoped to study (although it is to be recalled that his second visit to Italy with Lorne was to further his researches on the Digest)⁵⁴³. Cunningham probably followed the then normal practice of collating only the *loci difficiliores*, rather than the whole text. In support of this we may note that he seems to have approached his edition of Phaedrus, a text significantly shorter than that of the Digest, by first 'considering all the places which seemed ... to be vitious', and then going on to reflect which of these *loci difficiliores* could be cured and which not⁵⁴⁴.

Cunningham had an outstanding collection of early printed editions of the *Corpus iuris civilis*, including, of course, the Torelli edition of the *Florentina* and other important editions such as that of Haloander⁵⁴⁵. The importance of these was as a source – if a problematic and troubling one – of readings taken from manuscripts unavailable to him and of conjectural emendations⁵⁴⁶. In just the same way, we have seen that when he decided to edit Virgil, he started to collect as many editions of the poet as he could. One of Cunningham's major criticisms of Bentley was that the Englishman had not properly studied the early editions of Horace, and had thus attributed to himself conjectures which could in fact be found in the work of earlier critics⁵⁴⁷. Cunningham owned copies of nearly all the editions of the *Corpus iuris civilis* used by his contemporaries Brenkman and van Bijkershoek (we have already seen that Brenkman borrowed three of Cunningham's editions), and a great many more⁵⁴⁸. We can assume that he also hoped to borrow other important editions from public and private libraries, such as those of individuals such as van Bijkershoek, who

542. C. van Bijkershoek to C. van Eck, 6 Sept. 1703, UB Utrecht, MS 1000 7B3. On Bijkershoek's MSS, see van den Bergh, *Gerard Noodt*, p. 116; Stolte, *Henrik Brenkman*, p. 110.

543. Brenkman, *Historia Pandectarum*, p. 274–290.

544. A. Cunningham to J.P. d'Orville, 7 June 1726, Oxf. Bod., MS D'Orville 485, fol. 165.

545. *Bibliotheca Cuningamia*, p. 3, 5 (nos. 54–67, 70, 108) (*Juridici & Politici in Folio*); p. 27–28 (nos. 115–121) (*Juridici in Quarto*); p. 7–8 (*Juridici in Octavo & Minori Forma*) (nos. 207–216) (these include all items labelled as *Corpus iuris civilis* and copies of the Digest; items described as Code, Novels, or Institutes are not included). For a discussion of the editions with an appended list, see G.C.J.J. van den Bergh, *Alexander Cunningham's Corpus Juris*, *Tijdschrift voor Rechtsgeschiedenis*, 68 (2000), p. 99–115.

546. See on this D. Osler, *Magna Jurisprudentiae Injuria: Cornelius van Bynkershoek on early legal humanist philology*, *Ius Commune*, 19 (1992), p. 61–79.

547. Cunningham, *Animadversiones*, p. 62–79 contains lists of Bentley's emendations, pointing out where they can be found in earlier editions.

548. See Osler, *Magna Jurisprudentiae Injuria*, p. 78–79. Of the editions listed as used by Bijkershoek, Cunningham owned a copy of each except for that of Blaublommus and of Petrus ab Area Baudoza Cestius. See also van den Bergh and Stolte, *The Unfinished Digest Edition of Henrik Brenkman*, p. 252. Of the editions there listed, Cunningham owned a copy of each except for the two already listed and (probably) that attributed to Antonius Contius. Cunningham also owned the majority of the printed editions listed in Brenkman, *Historia Pandectarum*, p. 290–300.

also lived in The Hague, as well as drawing on the resources of Sunderland's library. Cunningham also had an extensive collection of humanistic literature on the Digest, which would contain variant readings attributed to manuscripts or to conjectural reconstruction. He was also clearly very concerned to obtain the necessary books. Thus, we have noted his attempts to borrow – among other books – a copy of Agustín's *De nominibus propriis του Πανδεκτου Florentini*⁵⁴⁹. By the time of his death, he had succeeded in acquiring a copy for his own library⁵⁵⁰. Burnett's description of Cunningham travelling all over the Low Countries to examine books indicates how seriously he took this task⁵⁵¹.

Cunningham also intended that his edition should contain 'all the Places of the Greek version and the Commentaries upon it that can help one to find out the true reading or meaning of any part of the text'. His library thus contained the edition (Paris 1647) of the *Basilica* by C.A. Fabrot⁵⁵². This was presumably the main source he intended to use to restore the Greek parts of the text as well as to illuminate any difficulties in the Latin text. In similar fashion, Brenkman also collated the *Florentina* in the edition of the Torelli with Fabrot's edition of the *Basilica*⁵⁵³. This would suggest that Cunningham was very alive to the problems with the text of the *Florentina*.

Cunningham proposed not only to furnish 'a Great Number of Corrections' to the text, but also to show that many existing corrections were 'not founded on the true Laws of Criticism'. This is where Cunningham's arguments about the laws of criticism and *ars emendandi* developed in his dispute with Bentley are important. Corrections to the text of the Digest could be founded either on the authority of a manuscript or on a conjectural reconstruction drawing on the scholar's knowledge of law, history, style, and language. Both these modes of reconstruction required fine critical skills. Scholars varied in their attitudes. Noodt, for example, was accused of being an overly bold critic⁵⁵⁴. Cunningham's general attitude, as revealed through his work on Horace, and his discussions of criticism, would suggest that he would give preference to emendations based on manuscript, and to be relatively conservative in his approach to conjectural emendation: this was the whole thrust of his criticism of the more intuitive Bentley, who emphasised the value of critical reason over manuscript readings. In this way, Gebauer later used Cunningham's edition of Horace to demonstrate the Scot's outstandingly learned and sober criticism⁵⁵⁵. Cunningham presumably would have approached the Digest in the same way. On the other hand, even if a conservative approach was emphasised, it must none the less be remembered that Cunningham himself corrected 400 passages of Horace. Cunningham might well have shown as much boldness as Noodt or even the

549. A. Cunningham to J. Logan, 22 Feb. 1709, CUL, MS Dd.3.64, fol. 56; J. Gronovius to L.T. Gronovius, 17 Mar. [n.d. but 1709], UB München, 2^o Cod. MS 637, fol. 70.

550. *Bibliotheca Cuningamia*, p. 4 (no. 71) (*Libri Juridici in Folio*).

551. T. Burnett to G.W. Leibniz, 20 Nov. 1705, NSLB, LBr. 132, fol. 149–150.

552. *Bibliotheca Cuningamia*, p. 4 (no. 80) (*Libri Juridici in Folio*).

553. Stolte, *Henrik Brenkman*, p. 19, 47–48, 117.

554. Van den Bergh, *Gerard Noodt*, p. 119.

555. G.C. Gebauer, *Narratio de Henrico Brenkmanno de manuscriptis Brenkmannianis de suis in corpore iuris civilis conatibus et laboribus*, Göttingen 1764, p. 10.

temeritas of a Bentley or a Haloander. It is important to assess such slight evidence as we have.

First of all, two examples of Cunningham's approach to proposed emendations of the Digest *ope ingenii* have survived. One was to the problem of the word '*prolulus*' which appeared in D. 45,2,12 in the Florentine manuscript. Van Bijkershoek reported various suggested emendations, but stated that he preferred to follow closely the 'best manuscript', and to correct this to '*Proculus*'. He stated that this was also the opinion of Cunningham, and wrote that he had communicated this emendation to Cunningham, who affirmed that he not only liked it, but had already noted the very same in the margin of his book⁵⁵⁶. This elegant and economical solution was also followed by Mommsen. The next conjectural emendation was to '*vinculorum verberatio*' in D. 48,19,7: '*veluti fustium admonitio flagellorum castigatio vinculorum verberatio*'. Voet wrote in his commentary *ad Pandectas* that Cunningham had suggested to him that this could be amended to '*vinculo, verberatio*', so that instead of there being one punishment, 'flogging with chains', there were two separate ones being listed in the text, 'being chained' and 'being flogged'. The suggestion was that the copyist had accidentally followed the previous double sequence of genitive plural succeeded by singular noun⁵⁵⁷. Van Bijkershoek also reported this suggested emendation by Cunningham and rejected it. He added, however, that Cunningham had further suggested that there might have been a *geminatio* here, so that the text would be '*vinculorum, Verberatio*'. Thus the text should have been read as '*vinculorumve verberatio*'. Van Bijkershoek also rejected this pointing out that that '*vinculorum castigatio*' was no more acceptable than the existing reading⁵⁵⁸. There is no obvious textual problem here, and Mommsen accepts the reading of the *Florentina*⁵⁵⁹. These examples of Cunningham's conjectural work are far too few to allow any general assessment of his quality as a critic of legal texts. They do indicate that his work was that of his period and that this was before the birth of the modern philological method.

Many of Cunningham's corrections of the *Florentina* as printed by the Torelli relied on critical judgments about the Latin language derived from his extensive learning in the ancient writers and his knowledge of ancient history and society: certainly he proposed that his edition should not only point out and correct more interpolations than had been done in that of van Leeuwen or 'in all the Law Books whatsoever', but also that it should also establish *rules* by which interpolations could be recognised. This was an important claim, since interpolations were currently controversial among the scholars of the Dutch Republic. In 1633, J.J. Wissenbach, the teacher of Noodt's teacher, had published *Emblemata*

556. C. van Bijkershoek, *Observationum juris Romani libri quatuor in quibus plurima juris civilis aliorumque auctorum loca explicantur & emendantur*, 3rd ed., Leiden 1752, p. 76.

557. Voet, *Commentarius ad Pandectas*, XLVIII,xix,2.

558. Bijkershoek, *Observationum ... libri quatuor*, p. 86–87. On gemination, see G.C.J.J. van den Bergh, *Geminatio Taurelliana: A Note on Humanistic Philology and Legal Scholarship*, in J.A. Ankum, J.E. Spruit, and F.B.J. Wubbe (edd.), *Satura Roberto Feenstra sexagesimum quintum annum aetatis complenti ab alumnis collegis amicis oblata*, Freiburg 1985, p. 523–532.

559. I owe the references to Cunningham in Bijkershoek's work to Osler, *Magna Jurisprudentiae Injuria*, p. 78.

Triboniani, gathering together suggested interpolations from a variety of sources. This work will have been well known to Cunningham; van Bijkershoek had at one stage considered refuting it⁵⁶⁰. Unfortunately, we know nothing of Cunningham's views on interpolations; his confident prediction that his rules would be 'a key to the understanding of many passages that have been not yett understood' and claim to identify more interpolations than found in van Leeuwen's edition and 'in all the Law Books whatsoever' suggests he was not as cautious as, say, van Bijkershoek. The proposed rules, however, would be intended to avoid the arbitrariness in identifying *emblemata Triboniani* and preserve the authority of the *Corpus iuris*⁵⁶¹. This does suggest a certain boldness – at the least – in his approach.

Cunningham was not merely going to edit the Digest, of course, but also the rest of the *Corpus iuris civilis*. His proposals say nothing of the Institutes or Novels. He owned many editions of the former and had editions of the latter in Greek and Latin⁵⁶². He intended to compare the laws in the *Codex* taken out of the *Codex Theodosianus* with their original sources and versions. As well as the text of the *Codex* to be found in general editions of the *Corpus iuris civilis*, he had a number of individual editions of it, and a manuscript translation into French of the first nine books. Moreover, he owned the *Codex Theodosianus* in the editions of Cujas and Gothofredus, and also a manuscript which included post-classical texts such as the *Novellae* of Theodosius and Valentinian⁵⁶³. All of these presumably would have been used to construct his own critical edition; the comparison with the *Codex Theodosianus* would not only help establish the text of the *Codex Justinianus* but give important historical insights.

Cunningham's proposals went beyond an edition, with notes of variants, in which the best readings were to be established according to his rules of criticism. He also proposed very extensive explanatory notes on the meaning of the text, claiming he would expound 'a Thousand Passages' which had either not been expounded by van Leeuwen in his edition or in the Gloss or had been expounded wrongly. Given Cunningham's mention of expounding laws concerning the Roman commonwealth and Roman antiquities, as well as those 'founded upon pure abstract Reasoning', these explanatory notes were evidently to be historical as well as juridical, incorporating scholarship not known to van Leeuwen, or subsequent to his edition, emanating from Italy and Spain and thus unknown in northern Europe. Stolte has pointed out that Brenkman's notes for his edition of the Digest also became historical and philological⁵⁶⁴. Again, Cunningham's huge library was an important resource for him in pursuing this quite extraordinary task and it is easy to identify in it the type of Spanish and Italian works he had collected for his edition.

Cunningham promised to point out carefully in his edition the antinomies and to devote a volume to their reconciliation. He promised a new 'method' of reconciling the antinomies which would allow many more to be resolved than had been done in the past. It is unfortunate that we know no more about this. Whether

560. See van den Bergh, *Gerard Noodt*, p. 129–130.

561. Consider van Bijkershoek's attack on Noodt: *ibid.*, p. 211–212.

562. *Bibliotheca Cuningamia*, p. 4 (nos. 73–75) (*Libri Juridici in Folio*).

563. *Bibliotheca Cuningamia*, p. 3–4 (nos. 69, 76, 77, 78, 79) (*Libri Juridici in Folio*).

564. Stolte, *Henrik Brenkman*, p. 43–46.

his method would be historical and philological or essentially rationalist is not specified: one suspects it might have been both. The final volume was intended to put the law in a rational structure to make it more easily understood and remembered through the use of a logical and systematic framework. This aim was obviously an important part of the educational aspects of the proposals printed here and had been particularly emphasised in the petition to Parliament in 1698.

9. – Conclusions

Cunningham's literary remains were not auctioned with his books, but were taken back to Scotland by Logan after his uncle's death. The Advocates' Library hoped to acquire the manuscripts of his edition of the *Corpus iuris civilis*, but evidently failed in this⁵⁶⁵. As noted, in the catalogue of the sale of his nephew's books in Edinburgh in 1755, two volumes of his 'Prelections on the Civil Law' are listed, which just possibly may be part of the draft text of his *magnum opus*, the edition of the *Corpus iuris civilis*⁵⁶⁶. However this may be, the fruits of Cunningham's long years of labour have now simply vanished. It none the less seems pertinent to conclude with an assessment of his work in so far as it is possible.

However much Cunningham may have been respected by his contemporaries for his scholarship and learning, his ultimate failure to produce his edition of the *Corpus iuris civilis* is the most evident fact about his years of work. It is important to consider why this happened. There are four obvious reasons why such projects are never completed. First, the project may be essentially incapable of completion. Secondly, the person undertaking it may not have the ability and skills necessary for its completion. Thirdly, he or she may have the ability and skills, but have some facet of their character that leads to the project never being brought to a conclusion. Fourthly, they may simply be unable to devote the necessary time and energy to the work⁵⁶⁷.

A first point to note is that Cunningham's plans were indeed very ambitious. To finish such a work was an immense labour of scholarship. It is instructive to consider that Brenkman did not bring his own very ambitious plans to fruition before he killed himself. Furthermore, Cunningham must have had major intellectual problems in carrying out the work on the Digest: his evident belief in the need to examine all the relevant texts (including non-legal) to understand and help restore an existing text promoted a near impossible labour; the complexity of his 'rules' when applied to such an enormous work as the Digest must have made his task virtually unachievable. Furthermore, while his claim was to emphasise the text over reason when it came to emendation, favouring *emendatio ope codicis*, his work on Horace and proposals on corrections and interpolations suggest a relatively radical approach to the text of the *Corpus iuris*, especially if he was going to produce a more correct edition than that of the Torelli. What

565. T. Pringle to D. Forbes, 30 Jan. 1731, *Culloden Papers*, p. 120–121.

566. *Catalogue of the Library of Mr. George Logan*, p. 34 (no. 1072).

567. See also van den Bergh, *Alexander Cunningham's Corpus Juris*.

this means, of course, was that his textual scholarship was typical of his day. As Osler and others have reminded us, scientific philology was an invention of the nineteenth century⁵⁶⁸. One cannot criticise Cunningham for his failings in this respect. Given, for example, that he wished to correct the printed version of the *Florentina*, it made no sense to make the base of his text the edition of van Leeuwen, should that have been his intention (although this is far from clear). Furthermore, his giving a great many variant readings from other manuscripts and editions when he believed that the *Florentina* was the best text seems perverse, although we do not know enough about his views on the relationship between the texts of the *Littera Vulgata* and that of the *Florentina* to know what lay behind this decision. On the other hand, he evidently was concerned to avoid arbitrariness in emending the text, and to try to develop rules for resolving antinomies, recognising interpolations, and correcting the text; one suspects, however, that his text could easily have been as arbitrary as many he criticised. There must have been a real danger of the text dissolving into a series of uncertainties rather than being clarified into an authoritative account of the law. In sum, Cunningham worked before the clear development of the principles (that have generally come to be associated with the name of Karl Lachmann) of, first, *recensio* to establish the text as best could be done from the manuscripts, before there is to be, secondly, any *emendatio*, if a convincing reading could not otherwise be established⁵⁶⁹. These two steps do not seem to have been clearly separated in Cunningham's thinking, although Lachman's 'method' – or at least its uncritical and rigid application – can itself be criticised⁵⁷⁰. Recent scholarship has emphasised that a textual critic can achieve a lot through wide knowledge, historical understanding, and insight into the nature of the texts with which he deals⁵⁷¹; Cunningham's broad and deep learning might have produced some interesting results in some instances. None the less, it is clear that there were sufficient problems inherent in the project as a whole that would have made it very difficult for him to bring it to any type of satisfactory conclusion.

An added difficulty for Cunningham was that his project was not just to produce an edition (as if that were not enough) but to reduce the Civil Law to an easily understood systematic form with readily remembered principles and consequential rules. Study of his completed *magnum opus* was to make it possible to learn in four years what previously it had taken ten years (according to the petition to Parliament) or twenty years (according to the proposals). In itself this remnant of what seems to have been his original intention was a large enough task; in conjunction with his progressively more ambitious editing proposals the labours were indeed Herculean, while revealing a growing confusion over exactly what were his aims. Major projects with confused and unclear aims are rarely completed in a satisfactory fashion.

In 1708, Cunningham thought that his edition was near ready for printing; but

568. See, e.g., Osler, *Magna Jurisprudentiae Injuria*; idem, *Vestigia Doctorum Virorum*; van den Bergh, *Gerard Noodt*, p. 138–155.

569. See, e.g., Wilamowitz-Moellendorf, *History of Classical Scholarship*, p. 130–132; Kenney, *The Classical Text*, p. 98–104; Sandys, *History of Classical Scholarship*, Vol. III, p. 127–131.

570. Kenney, *The Classical Text*, p. 105–129.

571. *Ibid.*, p. 130–151.

it is difficult to believe that this was other than the typical scholar's optimism about the state of his project: he had thought so in earlier years as well. No doubt he had done a considerable amount of work; but his project was probably no more in a state for publication than were his extensive critical notes on Horace at his death. It is difficult to say, however, that it was entirely due to the vastness of his design that Cunningham failed to complete his edition, although there can be little doubt that it was a major – perhaps the major – factor.

It is important to note, however, that Cunningham's contemporaries undoubtedly rated his skills as a scholar of Roman law very highly. Best described him as 'a most learned man', 'who, as we hope, will no longer begrudge to the learned world the outstanding monuments of his genius by which he has most strictly subdued legal science to his bidding'⁵⁷². In his great commentary on the Digest, Voet immortalised Cunningham as his 'former pupil, beloved as one of the best'⁵⁷³. Van Bijkershoek likewise described Cunningham as 'a most learned man to whom legal science has hopes of owing much'. He reported the pair of them as often talking of Roman law, and stressed that Cunningham's first suggestion to emend '*vinculorum*' had been made to him personally ('*coram mihi*') – presumably to ensure that readers did not think he had simply reported this suggestion from Voet's commentary *ad Pandectas*⁵⁷⁴. Brenkman considered it appropriate to describe Cunningham as 'famous' and 'excellent'⁵⁷⁵. Given that Brenkman and van Bijkershoek were great scholars of textual criticism, it is notable that they were happy to link their names with Cunningham's and to praise him publicly. Otto also publicly praised Cunningham with Brenkman as 'most renowned men, deserving the best trust equally of the Republic of Letters and of the Science of Law'⁵⁷⁶. Even if such hyperbole was the style of the day, it is notable that Cunningham attracted so much. Indeed, whatever the truth of Jugler's claim – allegedly originating with van Bijkershoek and the printer van der Linden – that Best plagiarised Cunningham, the very fact that the allegation could be made is testimony to Cunningham's continuing reputation as a critic⁵⁷⁷. It seems fair to conclude that Cunningham was considered by his contemporaries to be potentially as capable as anyone of completing his *magnum opus*. In learning and skills, he certainly conformed to the ideal of the 'careful man of good judgement' that contemporaries thought able to correct the texts of the *Corpus iuris* by drawing on 'deep knowledge of antiquity and law'⁵⁷⁸.

Turning to the third issue, that of character, we find an explanation of Cunningham's failure. Even if Brenkman himself did not finish his edition as he intended, he was obviously a more single-minded character, with a greater, more dogged determination to carry things through. He retired to Heenvliet and then to Culemborg and got on with the work. Cunningham stayed in The Hague, and often travelled back and forwards to London. He seems to have had a generally

572. Best, *Ratio emendandi leges*, p. 17.

573. Voet, *Commentarius ad Pandectas*, XLVIII, xix, 2.

574. Bijkershoek, *Observationum ... libri quatuor*, p. 76, 86.

575. Brenkman, *Historia Pandectarum*, p. 266.

576. Otto, *Thesaurus*, Vol. I, *praefatio*.

577. Jugler, *Beyträge zur juristischen Biographie*, Vol. I, p. 437–441.

578. *Review of Joannis Van de Water ... Observationum juris romani libri tres ... 1713*, *Journal littéraire*, 3 (1714), p. 91–108 at p. 92–93.

more restless, less focused character than the Dutch scholar – a point perhaps picked up by Leibniz when he said in 1697 of Cunningham's plans to work on Anglo-Saxon that 'being always moving around it will be difficult for him to follow through these sort of plans'⁵⁷⁹. The compliments of Best and van Bijnkershoeck quoted above do have a certain double-edged quality, emphasising hopes (perhaps forlornly) for work from Cunningham; Leibniz ultimately expressed exasperation, writing to Burnett in 1707: 'What is your compatriot Mr Cunningham up to? Are we to see nothing of his?'⁵⁸⁰. In similar vein of praise and frustration, the conclusion to a review of Noodt's *Opera omnia* in the *Journal littéraire* published by Cunningham's friend Thomas Johnson in The Hague commented in 1713 that:

The great benefit that may be derived from Mr Noodt's corrections of the text of the *Corpus juris* can serve only to increase the public's impatience for a work entirely devoted to such endeavours, such as would be the *Corpus juris* restored and corrected by the learned Mr Cunningham. One cannot doubt but that this work will come up to the high expectations that have been formed of it based on the talent of this scholar and the long time during which he has been working on it⁵⁸¹.

The tenor of this suggests that by now even Cunningham's friends seriously doubted if his *magnum opus* would be finished.

In line with this restlessness of character, Cunningham evidently jumped from project to project and had difficulty in finishing anything. His edition of Horace and attack on Bentley took ten years to complete: he never finished the further notes. This project distracted him from his edition of the *Corpus iuris civilis*; it was provoked by Bentley's edition and perhaps by the Englishman's savage treatment of Le Clerc. Out of his work on Horace grew a project on Virgil. Bentley's dispute with Hare prompted Cunningham to pursue an edition of Phaedrus, now planning a defence of his former target of attack. These were not the actions of a man likely to finish the extensive project set out in his proposals. Seven years before van Bijnkershoeck published the study in which he gave the praise of Cunningham just quoted, he expressed the view to van Eck that the Scotsman's work would never appear⁵⁸². In 1700, Graevius, when writing to Laurens Gronovius to communicate to him Cunningham's offer of 100 guilders for a copy of his notes, stated that he thought Gronovius could do so without disadvantage, as the Scotsman would never perform what he had promised⁵⁸³. Cunningham's character was evidently such that, from the very beginning, his contemporaries were convinced that he was unlikely ever to finish a major project. For example, John Mitchell wrote of Cunningham to Charles Mackie in

579. G.W. Leibniz to T. Burnett, 24 Aug. 1697, in Leibniz, *Opera omnia*, Vol. VI, p. 256.

580. G.W. Leibniz to T. Burnett, 29 Dec. 1707, in Leibniz, *Opera omnia*, Vol. VI, p. 278. The French is literally: 'Are we to see nothing of him'; the context suggests, however, that Leibniz had publications by Cunningham in his mind.

581. *Review of Gerardi Noodt ... opera omnia ... 1713*, *Journal littéraire*, 1 (1713), p. 243–263 at p. 263.

582. C. van Bijnkershoeck to C. van Eck, 6 Sept. 1703, UB Utrecht, MS 1000 7B3.

583. J.G. Graevius to L.T. Gronovius, 9 Aug. 1700, UB München, 2^o Cod. MS 649, fol. 65.

1728: ‘He is always busy about something, but whether the world will be made happy by any more of his productions [I do not] take upon me to tell, because he is too much set upon perfection in all that [he does] or undertakes’⁵⁸⁴. Cunningham’s good friend Andrew Fletcher of Saltoun talked of Cunningham’s ‘delaying humor’, and warned his nephew that ‘you need not expect that a man who has ben [sic] almost a year in resolving to go into England can go thither, come back and go with you into France in tuo or 3 months time’. He softened these remarks by commenting: ‘There are no men more incorrigable [sic] in these faults than those who have other ways good tallents and great capacity’⁵⁸⁵.

Fourthly, Cunningham was never able entirely to devote himself to his work on the *Corpus iuris civilis*. Until he settled in The Hague in 1703, he seems regularly to have served as tutor to a series of noblemen. While this work gave him the possibility of extensive travel to visit libraries, examine editions and manuscripts, collect books, and meet foreign scholars, it also hampered concentrated work. After 1703, he obviously devoted a considerable amount of energy and time to dealing in books. While this would have some benefits for his scholarly work, it also prevented him from pursuing it in the necessary, single-minded fashion. From 1703 to 1722, he had always to be mindful of the needs and wishes of his great patron, Sunderland. Indeed, since Cunningham was not a rich man, even building up his own collection of books must have been a time-consuming business. He was also happy to help students in the Netherlands and seemingly to spend a lot of time doing so.

It seems fair to conclude that the combination of Cunningham’s character – simultaneously obsessive, ill-focused, and easily distracted – and circumstances with the extensive nature of his project led to his not finishing it. We do not know how far he had got in the work, of course, but even if his work was well-advanced, all scholars know that it is always the last mile to be travelled that is the slowest and most difficult. Once Brenkman had started on his edition of the Digest, it must have been easy for someone as perfectionist and as easily diverted from the task in hand as Cunningham to abandon concentrated work on such a difficult project. Cunningham’s erudition and skills suggest that his edition with its extensive historical, juridical, and critical annotations would have been of great interest. Whether his critical work on the text of the Digest would have had a lasting value is an interesting question – the answer being perhaps not; Cunningham’s work is none the less important, whether or not it ultimately failed to come to fruition.

If the proper context in which to place Cunningham is that of Dutch scholarship of the late seventeenth and early eighteenth centuries, the obvious comparison to make is with the work of Brenkman and Laurens Gronovius. Cunningham’s work was also philological and historical in its orientation. He too was as much a classicist as a jurist, whose main aim was to establish a good text. On the other hand, the projected volumes of resolutions of antinomies in the Digest and of an account of the Roman law in a rational order according to

584. J. Mitchell to C. Mackie, 27 July 1728, EUL, MS La. II.90.1.22. The words in square brackets are my conjectural restorations where the manuscript is torn.

585. A. Fletcher to A. Fletcher, 20 Feb. 1716, NLS, Saltoun Papers, MS 16503, fol. 127.

its principles indicate that he was also interested in the more juridical aspects of his work, and his contemporaries clearly thought of him as a jurist. All of this suggests that one should probably not be too quick to divide the Dutch school into those primarily interested in antiquarian studies and those interested in practical issues: the two were not readily separated. This said, the designation of Cunningham as a 'critic' is clearly apt. Stolte points out that Brenkman seems to have lacked a political orientation in his work, while Wallinga makes the same point about Laurens Gronovius⁵⁸⁶; the same can also be said for Cunningham.

That at much the same time Brenkman and Cunningham, two men trained in the Dutch traditions of legal scholarship, should have worked on such similar projects is significant; a point further emphasised by the work of Laurens Gronovius. It demonstrates not only how anxious scholars were over the state of the texts, but also how close the work of many jurists necessarily was to that of classicists. There was a real concern and need to link law with letters. This suggests that to understand the Dutch Elegant School of Roman law, and perhaps the Roman-Dutch School generally, it is important to place its work in the context of contemporary classical scholarship, or, rather, to see legal scholarship, other than the purely dogmatic or oriented to practice, as being very much part of the wider world of classical scholarship. This, indeed, seems how legal study was ideally viewed, so that regulations to govern legal study prepared for the University of Leiden prescribed, as well as law, study of the history and institutions of Rome, the works of classical orators, and also ancient philosophy⁵⁸⁷. At this time, there were a number of noted classicists, philologists and scholars of the ancient world in the Netherlands, carrying on the tradition of Lipsius, Heinsius and others: one thinks most obviously of Jacob Perizonius, J.G. Graevius, J.F. and Jacob Gronovius, and Pieter Burman⁵⁸⁸. Even if Gerard Noodt was described in 1680 by Graevius as 'among our law professors the only one who is not unschooled in our letters'⁵⁸⁹, Anton Schultingh and Cornelis van Bijnkershoek are obvious examples of other lawyers who had strong groundings in Latin philology and ancient history. The intellectual careers of Brenkman and Cunningham suggest that it may have been this very strong linking of classics and Roman law in the Netherlands that was central to the success of the Dutch Elegant School. The career of Cunningham very much confirms Stolte's conclusion that 'the history of the Dutch Elegant School cannot be the history of legal science alone'⁵⁹⁰. It may even have been this that contributed much to the vitality of scholars such as Johannes Voet, who were not antiquarian in their orientation, but who were none the less interested in the textual work of their more antiquarian brethren: in other words, the contemporary Roman-Dutch scholars oriented towards the *usus modernus Pandectarum* would have owed much to the antiquarian and elegant jurists. Indeed, such scholars had to take textual criticism into account because of its potential practical impact. Thus, the

586. Stolte, *Henrik Brenkman*, p. 87; Wallinga, *Gronovius*, p. 492–493.

587. See Stolte, *Henrik Brenkman*, p. 8.

588. Pfeiffer, *History of Classical Scholarship*, p. 124–129; Sandys, *History of Classical Scholarship*, Vol. II, p. 300–332, 443–454; Th. J. Meijer, *Kritiek als Herwaardering: Het Levenswerk van Jacob Perizonius (1651–1715)*, Leiden 1971.

589. Van den Bergh, *Gerard Noodt*, p. 46.

590. Stolte, *Henrik Brenkman*, p. 94.

Journal littéraire made a plea in 1714 that it might be possible for ‘public authority’ to establish a commission of the best scholars to rid the *Corpus iuris* of the antinomies and contradictions ‘that often furnished equal amunition to good and bad causes’⁵⁹¹.

If Cunningham can only be understood in the context of the Dutch Elegant School’s interests and preoccupations, what of his position as a Scotsman? Has he any significance for Scottish legal history? The answer must be that he has. It is notable that the Scottish Parliament was willing to support his researches in Roman law. Obviously, one can see here the influence of the patronage of the Duke of Queensberry and of the Earl of Argyll; it was presumably also very useful that Cunningham’s cousin Alexander Cunningham of Chirrieland and Collellan was a member of Parliament as the Commissioner for the Burgh of Irvine, even if he was no longer on the Committee for the Security of the Kingdom in 1698 when it dealt with Cunningham’s original petition⁵⁹². It should not be forgotten, however, that the Douglasses of Queensberry and Campbells of Argyll had many rivals and enemies among the magnates of Scotland, who would have been only too happy to foil their desires where possible⁵⁹³. Even if, in 1698, the alliance of Queensberry and Argyll supported by Carstares and Portland must have argued strongly in favour of Cunningham’s pension, Parliament was happy to renew the allocation in 1704. This suggests that Cunningham’s projected edition of the *Corpus iuris civilis* was attractive to the Estates. It must have been viewed as on a par with the projects of John Adair to map the coasts and islands of Scotland, of John Slezer to produce his account of the ancient and modern state of Scotland, and of Nisbet to produce his work on Heraldry, all of which were also supported at this time from the same source of revenue⁵⁹⁴. In other words, it was a project attractive to the learned *virtuosi* of Scotland⁵⁹⁵.

Among the *virtuosi* of Scotland were many lawyers. Cunningham’s projected work must have appealed to them. Thus, we find on the Committee for the Security of the Kingdom who recommended Cunningham’s appointment and pension: the Lord President of the Court of Session (Sir Hew Dalrymple), two Senators of the College of Justice (Sir William Hamilton of Whitehill and Sir James Scougall), one of whom had previously been Professor of Civil Law in King’s College, Aberdeen (Scougall), one man who was within a year of being appointed a Senator (Sir John Maxwell of Pollok), one who had been named a Senator but had never taken his seat (Sir Robert Sinclair of Stevenston), two judges in the Commissary Court in Edinburgh (James Elphinstone of Logie and James Smollet), and a writer in Edinburgh (Robert Stewart)⁵⁹⁶. Some of these

591. *Review of Joannis Van de Water ... Observationum juris romani libri tres ... 1713*, *Journal littéraire*, 3 (1714), p. 91–108 at p. 93.

592. APS, Vol. X, Appendix p. 18. (He had been on it in 1696: *ibid.*, Vol. X, Appendix, p. 3).

593. Riley, *King William and the Scottish Politicians*, p. 125–138 points out that at this time the second Duke of Queensberry was in a court alliance with the Duke of Argyll. This would have been useful in 1698. By 1704, however, politics had changed.

594. APS, Vol. IX, p. 491–492 (1695, c. 85); *ibid.*, Vol. X, p. 175–176 (1698, c. 37); *ibid.*, Vol. XI, p. 203–204 (1704, c. 9); Cavers, *Vision of Scotland*, p. 73–92.

595. See Emerson, *Sir Robert Sibbald*.

596. This information is taken from *Parliaments of Scotland*, ed. Young.

men were subsequently to influence the development of legal education in the Universities of Edinburgh and Glasgow⁵⁹⁷. It is also worth noting that the Committee included one past and one future Rector of the University of Glasgow (David Boyle of Kelburn and Sir John Maxwell). Those who made the recommendation to support Cunningham's work knew the interest and importance of it, and included individuals keenly interested in intellectual life and legal education, while Cunningham, in his petition to Parliament, had stressed the value to education of his edition of the *Corpus iuris civilis*.

It may seem surprising that Parliament should have supported a work that was so essentially antiquarian as Cunningham's was to have been in so many ways. This, however, would be to misunderstand Scottish attitudes to legal education. If, as we have seen, Cunningham himself recommended George Mackenzie to attend the classes of Voet as the most suitable at Leiden for a future advocate, Scots students of law in the Netherlands none the less routinely took classes from professors such as Perizonius, Burman, and J.F. and Jacob Gronovius as part of their legal education. The views they held of legal education were those of the Dutch Elegant School. They considered that the study of law, classics, and history could not be separated from one another⁵⁹⁸. Sir George Mackenzie of Rosehaugh's description in 1689 of 'History, Criticism, and Rhetoric' as 'the handmaidens of Jurisprudence' reflected the views of all Scots lawyers of this day⁵⁹⁹. The relationship between the Roman law of the *usus modernus* and the Roman law of elegant jurisprudence was fluid.

Unfortunately, there has not yet been a detailed study of the libraries of Scots lawyers of this period, but it is worth noting that the first entry in the library catalogue of Charles Areskine or Erskine, who had held the regius Chair of Public Law and the Law of Nature and Nations in Edinburgh, but whose career was essentially at the bar and as a politician and judge, was the Torelli edition of the *Florentina*⁶⁰⁰. He also owned Brenkman's *Historia Pandectarum* (two copies), *De eurenaticis diatriba*, and *Alfenus Varus*⁶⁰¹. His library possessed Laurens Gronovius's *Emendationes Pandectarum juxta Florentinum exemplar examinatae ad virum illustrissimum Antonium Maggliabequium* published in Leiden in 1685, the only published fruits of Gronovius's collation of the *Florentina*⁶⁰². He also subscribed to Otto's *Thesaurus iuris romani* as it appeared⁶⁰³. Humanistic works of van Bijndershoek, Schultingh, and Noodt are all to be found in his collection⁶⁰⁴, as are books by Perizonius and J.F. Gronovius⁶⁰⁵.

597. See on Glasgow, J.W. Cairns, *The Origins of the Glasgow Law School: The Professors of Civil Law, 1714–61*, in P. Birks (ed.), *The Life of the Law: Proceedings of the Tenth British Legal History Conference* (Oxford 1991), London 1993, p. 151–194 at 154, 171–172. See on Edinburgh, Edinburgh City Archives, McLeod Bundle 9, shelf 36, bay C, relating to the creation of the Chair of Scots Law in 1722. I hope to discuss this document more fully elsewhere.

598. See Cairns, *Netherlands' Influences on Scots Law and Lawyers*.

599. G. Mackenzie, *Oratio inauguralis in aperienda jurisconsultorum bibliotheca*, ed. J.W. Cairns and A.M. Cain, Edinburgh 1989, p. 73.

600. NLS, MS 3283, p. 1.

601. *Ibid.*, p. 30, 50. On these last two works, see Stolte, *Henrik Brenkman*, p. 129.

602. NLS, MS 3283, p. 38. See Stolte, *Henrik Brenkman*, p. 18.

603. See T. Johnson to C. Mackie, 19 Oct. 1728, EUL, MS La. II.91.B.62; NLS, MS 3283, p. 4.

604. NLS, MS 3283, p. 22, 23, 26.

Although there are many works of less antiquarian and humanistic orientation in his law library, the impression one gets is that this practising lawyer had a more than passing interest in the type of work that Cunningham set out to do. His library could be fairly considered a lesser version of Cunningham's. Duncan Forbes of Culloden, Lord President of the Court of Session, had a much more limited law library; even so, it contained a notable proportion of humanistic material, including Best's *Ratio emendandi leges*, the Torelli edition of the *Florentina*, Labitte's *Index*, Wissenbach's *Emblemata Triboniani*, and a work of Brenkman⁶⁰⁶. It is dangerous to extrapolate from the library of two men. Thus, for instance, one can point out that the library of John Spotswood, a private teacher of law in Edinburgh, and a pupil of Noodt and Vitriarius, though containing humanistic works, is very different in its over-all orientation⁶⁰⁷. The libraries of Areskine and Forbes none the less indicate that, even if Cunningham's project has to be seen in the context of the Dutch Elegant School, that was the context in which Scots advocates themselves operated at this period.

Of course, elegant jurisprudence was not the monopoly of the Dutch; to take one instance, Sir George Mackenzie, whose views on the necessary links of law and literature have just been quoted, was a graduate of Bourges in France⁶⁰⁸. Scots had long gone abroad to study law. In the second half of the seventeenth century, however, a preference for study in France had been replaced by one for study in the Dutch Republic, a trend reinforced by the Revocation of the Edict of Nantes and William of Orange's succession to the Scottish throne⁶⁰⁹. This meant that it was the famous Dutch professors at the end of the Golden Age who influenced Scottish practice and understanding of law. It was their interests and concerns which determined Scottish attitudes to Roman law and legal education at this period. Thus, while there was elegant jurisprudence to be found elsewhere, since it was an international phenomenon, it was the Dutch version that affected the Scots most strongly during Cunningham's lifetime.

Cunningham's project was thus not one in any way alien to the Scottish legal tradition at the turn of the seventeenth century; it was firmly within it. Furthermore, though Cunningham himself never taught law in Scotland, when formal legal education came to Scotland in the first quarter of the eighteenth century, it was the model of humanistic legal education found in the Netherlands that was introduced, first through private teachers and then through the creation of active chairs in the Universities of Edinburgh and Glasgow⁶¹⁰. If Cunningham's Parliamentary appointment as 'professor of the Civil Law in this Kingdome' was not to lead to him teaching in Scotland (and was not intended to, for that mat-

605. *Ibid.*, p. 36, 66.

606. *Catalogue of Curious and Valuable Books; Being Chiefly the Library of the Right Hon. Duncan Forbes of Culloden, Esq; late Lord President of the Session*, Edinburgh 1748, p. 7 (nos. 191, 194), 8 (204, 211, 215).

607. Cairns, *John Spotswood, Professor of Law*, p. 149–150.

608. See Archives Départementales du Cher, Livre Matricule des Ecoliers, Série D.9, fol. 5v (I owe this reference to the kindness of Mme Marie-Claude Tucker).

609. See Cairns, *Netherlands' Influences on Scots Law and Lawyers*, p. 143–146.

610. See Cairns, *John Spotswood, Professor of Law*, p. 157–158; *idem*, *Origins of the Glasgow Law School*, p. 152–154, 186–194; *idem*, *Netherlands' Influences on Scots Law and Lawyers*, p. 146–153.

ter), it none the less indicated a general trend for future developments in Scotland.

That trend, however, was ultimately to be away from the type of scholarship in Roman law associated with Cunningham, with its close link with studies of classical literature and history. The legal concerns of the lawyers and legal thinkers of the Scottish Enlightenment were not to be those of Dutch humanism, even if one can infer a certain influence. One can note as confirming this to some extent that Scots, who had been most interested in collecting the works of Dutch legal scholars in the period from 1650 to 1700, largely lost interest in acquiring Dutch law books after 1750⁶¹¹. Furthermore, while the history of study of classics in eighteenth-century Scotland is still to be written, it is obvious that, although the ancient authors remained the focus of general education, the type of scholarship and editing associated with, say, J.G. Graevius and Pieter Burman no longer commanded universal interest and admiration. The new spirit is exemplified by George Turnbull, a proponent of moral sense theory in philosophy, who evidently felt a measure of exasperation with the aged Cunningham's concern with different readings in Horace and Phaedrus⁶¹². For Turnbull, reflecting current Scottish intellectual concerns, what was important was the subjection of natural law theory to a critique derived from the theory of moral sense and study of the natural history of humankind: one of his most important publications was to be his translation – with critical remarks – of J.G. Heineccius's *Elementa juris naturae et gentium*, first published in Halle, 1737⁶¹³. The legacy of the ancient world was no longer regarded as the most important foundation of knowledge; a more empirical approach deriving from the scientific revolutions of the seventeenth century was to have priority. Indeed, the type of scholarship associated with the classicists of the Dutch Republic was soon disparaged. A Scottish visitor to Leiden in 1731 commented that '[t]his dull town affords no news of gayety or diversion'; furthermore, there was no remarkable news in the Dutch learned world, though 'there are always some busy here in publishing books stuffed with other peoples notes and some new emendations as they call them'⁶¹⁴. The new intellectual orientation of the Scots was turning them away from the traditions of Dutch classical scholarship, while its related field of historical study of Roman law was being displaced by a focus on the law of nature and nations.

In 1747, George Logan described his uncle as 'the most learned Civilian in the Age'⁶¹⁵. The context of this remark, which perhaps owes more to under-

611. See D.J. Osler, *Scoto-Dutch Law Books of the Seventeenth and Eighteenth Centuries*, in J.M. Fletcher and H. de Ridder-Symoens (edd.), *Lines of Contact: Proceedings of the Second Conference of Belgian, British, Irish and Dutch Historians of Universities* held at St Anne's College Oxford 15–17 September 1989, Gent 1994 (= *Studia Historica Gandensia: Publikaties van de Opleiding Geschiedenis van de Universiteit Gent*, 279), p. 57–74.

612. G. Turnbull to C. Mackie, 10 Jan. 1730, EUL, MS La. II.91.B.74.

613. J.G. Heineccius, *A Methodical System of Universal Law: Or, the Laws of Nature and Nations Deduced from Certain Principles, and Applied to Proper Cases*, trans. by G. Turnbull, 2 vols., London 1741. On Turnbull's thinking, see K. Haakonssen, *Natural Law and Moral Philosophy*, p. 85–99.

614. T. Calderwood to C. Mackie, 16 July 1731, EUL, MS La. II.91.C.10.

615. G. Logan, *Second Treatise on Government*, Edinburgh 1747, sig. b[2]v.

standable family piety than sound judgement, was a dispute over Jacobitism worked out through a debate on Scottish history and the works of George Buchanan, in which Logan's adversary was the humanist Thomas Ruddiman, Jacobite Keeper of the Advocates' Library⁶¹⁶. The assessment of Cunningham's stature as a scholar none the less strikes the modern reader as ridiculous; yet, in a country which had produced no scholars of Roman law of the slightest note since the sixteenth century, Cunningham's fame as student of Roman law was no doubt significant, if evanescent⁶¹⁷. This said, despite Cunningham's many years of labour on the text of the *Corpus iuris civilis*, especially on that of the Digest, his most lasting legacy has undoubtedly derived from his book dealing. He helped cultivate the taste that led to the collection of important private libraries such as that of Sunderland and Fletcher of Saltoun and no doubt others. He had a major impact on at the Advocates' Library in Edinburgh, mainly through the collection of Lord George Douglas, but also through further sales, and on the Codrington Library in Oxford; furthermore, Cambridge University Library also bears his mark, since Bishop Moore's Library was bought by King George after the prelate's death and presented to the University of Cambridge⁶¹⁸. It should always be remembered, however, that it was Cunningham's skills as a jurist and classicist, acquired and exercised in the Dutch Republic, that permitted him to deal in books and advise so successfully on their purchase. His life demonstrates the importance and complexity of the intellectual formation of the Dutch Elegant School, in which issues of editing, knowledge of the legal texts, knowledge of classic authors and antiquities, and skills in bibliography all had a role to play.

Appendix⁶¹⁹

Proposals for Publishing the Body of the Civil Law with Annotations in 2 vol: in fol: Together with 2 other vol: in fol: in one of which there shall be a complete collection of the Antinomies with their reconciliations And in the other the Civil Law shall be reduced into a system.

This new Edicion of the Body of the Civil Law shall be much better than that of Van Leeuwens in 2 vol: in fol: printed at Amsterdam in the yeare 1663.

For in the first place the text shall be much correcter than that of the Amsterdam Edicion

616. On this dispute, see C. Kidd, *Subverting Scotland's Past: Scottish Whig Historians and the Construction of an Anglo-British Identity*, Cambridge 1993, p. 83–96; see also Cairns, *Three Unnoticed Scottish Editions*, p. 24–25.

617. Henry Scrimgeour, Edward Henryson, and William Barclay were the only Scottish writers on Roman law of note until the nineteenth century: see, e.g., J.W. Cairns, T.D. Fergus, and H.L. MacQueen, *Legal Humanism and the History of Scots Law: John Skene and Thomas Craig*, in J. MacQueen (ed.), *Humanism in Renaissance Scotland*, Edinburgh 1990, p. 48–74 at p. 48–51.

618. Moore, *Memoir of ... John Moore*, p. 26–34.

619. These Proposals are published with the permission of the Trustees of the NLS, which is most gratefully acknowledged.

and the Florentin Manuscript shall be more faithfully published than it was by Taurellus who spent so many Years in the Publishing of itt.

- 2dly This Edicion shall Containe many more various Readings than the Amsterdam Edicion Does and such Readings shall be Established as every knowing Lawer shall allow to [be] absolutely the best.
- 3dly The Laws in Justinians Code that are taken out of the Theodosian Code shall be more carefully compared with the places they are taken out of in this than they have yett been in all the Different Edicions of the Body of the civil Law.
- 4thly This shall Containe all the Places of the Greek version and the Commentaries upon it that can help one to find out the true reading or meaning of any part of the text.
- 5thly For the satisfacion of the Curious Reader it shall Containe a Great Number of Corrections of the text, And further itt shall be shewen that many even of the most Ingenious ones are not founded on the true Laws of Criticism.
- 6thly Itt shall not only Containe a far Greater Number of Tribonian's Interpolacions than the aforesaid Edicion Does, but even more than th[ere] are to be found in all the Law Books whatsoever some Rules shall be Likewise Laid Down by which one shall be able to Judge whether a passage be Interpolated or not. These Rules will be a key to the understanding of many passages that have not been yett understood.
- 7thly Both the Lawes that relate to the state of the Roman Comonwealth and to the roman antiquities as well as those that are founded upon pure abstract Reasoning shall be Succinctly but Clearly expounded in it, & it shall not only containe the substance of above [tear] not knowne to Van Leeuwen tho Published some Years before his Edicion, but Likewise the Choisest Remarks that are to be mett with in the Law books printed in Spain and Italy since the Yeare 1663 ffew of which (if any at all) are knowne even to the professor [sic] of Law in holand, ffrance, Germany etc. And it may be presumed there will be a Thousand Pasages expounded in itt which have not been expounded either in Van Leeuwen's Corpus or in the Corpus Glossatum, Or which have note been rightly expounded in them.
- 8thly As for the Antinomies they shall be more exactly marked in this edicion than in the other, And there shall be published one vol: in fol: of Reconcilacions of them this vol: shall be written in a Method altogether new, by which Method many Laws will be reconciled that nobody hath yett been able to reconcile, And many reconciliacions which in the maner the authors expound them are precarious or at best but Probable when they are expounded in this way will become certaine and Infallible.

The fourth vol: shall be a System of the principall matters contained in the Tytles of the Digests & code written by way of principles and Consequences which Method as it is very Agreeable to that of the Roman Lawyers, so it will mightily Contribute to the Improveing of the Judgement and will at the Same time Render the Study of the Civil Law much Less burthensome to the Memory then it is at present.

If every part of this Designe Can be putt in execution It is to be hoped that the aforesaid foure vol: will give a truer and fuller view of the Civil Law than all the books yett extant have done, And that with the help of those few Books, one may in foure years time Acquire a perfecter knowledge of itt than he could Doe in Twenty by the study and perusall of all other Books in that ffaculty.

[Endorsed on back] Proposals for Publishing the Body of the Civil Law with Annotacions.